DOCKET

SUPREME COURT
OF THE UNITED STATES

No. 12-86
Vide 12-79, 12-88

Title:	Willis of Colorado Incorporated, et al., Petitioners v. Samuel Troice, et al.
Docketed:	July 23, 2012
Lower Ct:	United States Court of Appeals for the Fifth Circuit
Case Nos.:	(11-11048)
Decision Date:	March 19, 2012
Rehearing Denied:	April 19, 2012

Questions Presented

~~Date~~~	~~~~~~~Proceedings and Orders~~~~~~~~~~~~~~~~~~~~
Jul 18 2012	Petition for a writ of certiorari filed. (Response due August 22, 2012)
Aug 16 2012	Brief of respondents James Roland, et al., and Leah Farr, et al. in opposition filed.
Aug 20 2012	Brief of respondents Samuel Troice, et al. in opposition filed. VIDED.
Aug 22 2012	Motion for leave to file amicus brief filed by DRI-The Voice of the Defense Bar.
Aug 22 2012	Motion for leave to file amicus brief filed by Breazeale, Sachse & Wilson, LLP. VIDED.
Sep 4 2012	Reply of petitioners Willis of Colorado Incorporated, et al. filed.
Sep 5 2012	DISTRIBUTED for Conference of September 24, 2012.
Oct 1 2012	The Solicitor General is invited to file a brief in this case expressing the views of the United States.
Dec 14 2012	Brief amicus curiae of United States filed. VIDED.
Dec 24 2012	Supplemental brief of respondents Samuel Troice, et al. filed. VIDED.
Dec 26 2012	DISTRIBUTED for Conference of January 11, 2013.
Dec 26 2012	Supplemental brief of petitioners Willis of Colorado Incorporated, et al. filed. (Distributed)
Dec 26 2012	Supplemental brief of respondents James Roland, et al., and Leah Farr, et al. filed. (Distributed)
Jan 14 2013	DISTRIBUTED for Conference of January 18, 2013.
Jan 18 2013	Motion for leave to file amicus brief filed by DRI-The Voice of the Defense Bar GRANTED.
Jan 18 2013	Motion for leave to file amicus brief filed by Breazeale, Sachse & Wilson, LLP GRANTED.

Jan 18 2013	Petition GRANTED. The petition for a writ of certiorari in No. 12-79 is granted limited to Question 1 presented by the petition. The petition for a writ of certiorari in No. 12-88 is granted limited to Question 1 presented by the petition. The cases are consolidated and a total of one hour is allotted for oral argument. VIDED.
Feb 7 2013	The time to file the joint appendix and petitioners' briefs on the merits is extended to and including May 3, 2013. VIDED.
Feb 27 2013	The time to file respondents' briefs on the merits is extended to and including July 18, 2013. VIDED
Apr 9 2013	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for the petitioners Willis of Colorado, et al. VIDED.
Apr 9 2013	Consent to the filing of amicus curiae briefs, in support of either party or of neither party, received from counsel for all respondents. VIDED.
May 3 2013	Joint appendix filed. (2 Volumes) VIDED. (Statement of costs filed)
May 3 2013	Brief of petitioners Willis of Colorado Incorporated, et al. filed.
May 10 2013	Brief amicus curiae of United States filed. VIDED.
May 10 2013	Brief amicus curiae of Breazeale, Sachse & Wilson, LLP filed. VIDED.
May 10 2013	Brief amicus curiae of Causeway Capital Management LLC filed.
May 10 2013	Brief amicus curiae of Securities Industry and Financial Markets Association filed. VIDED.
May 10 2013	Brief amicus curiae of DRI-The Voice of the Defense Bar filed. VIDED.
Jun 12 2013	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument filed. VIDED.
Jul 18 2013	Brief of respondents Samuel Troice, et al. filed. VIDED. (Distributed)
Jul 22 2013	CIRCULATED. VIDED.
Jul 23 2013	SET FOR ARGUMENT on Monday, October 7, 2013. VIDED
Jul 24 2013	Brief amici curiae of Sixteen Law Professors filed. VIDED. (Distributed)
Jul 25 2013	Brief amici curiae of Public Investors Arbitration Bar Association, et al. filed. (Reprinted) VIDED. (Distributed)
Jul 25 2013	Brief amicus curiae of National Association of Bankruptcy Trustees filed. VIDED. (Distributed)
Jul 25 2013	Brief amicus curiae of Occupy the SEC filed. VIDED. (Distributed)
Aug 2 2013	Record from U.S.C.A. for 5th Circuit is electronic.
Aug 2 2013	Record from U.S.D.C. for Northern District of Texas is electronic.
Aug 19 2013	Reply of petitioners Willis of Colorado Incorporated, et al. filed. (Distributed)
Aug 30 2013	Motion of the Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument GRANTED.
Oct 7 2013	Argued. For petitioners: Paul D. Clement, Washington, D. C.; and Elaine J. Goldenberg, Assistant to the Solicitor General, Department of Justice, Washington, D. C. (for United States, as amicus curiae.) For respondents: Thomas C. Goldstein, Bethesda, Md. VIDED.

PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
FILED
JUL 18 2012
OFFICE OF THE CLERK

12-86

No. ____

In the
Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; and SEI INVESTMENTS COMPANY

Petitioners,

v.

SAMUEL TROICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The Securities Litigation Uniform Standards Act of 1998 ("SLUSA") precludes state law class actions that allege a misrepresentation or omission "in connection with" the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1). The complaints at issue in this case plainly included such alleged misrepresentations. The district court, applying Eleventh Circuit precedent, recognized as much and dismissed the complaints. However, the Fifth Circuit disagreed and, purporting to apply the Ninth Circuit's test, found the fact that the complaints included alleged misrepresentations in connection with a covered security insufficient to invoke SLUSA because the complaints also included *other* misrepresentations that were not made "in connection with" a covered securities transaction. In doing so, the Fifth Circuit acknowledged that it was departing from the holding of the Eleventh Circuit and several other circuits.

The question presented is whether a covered state law class action complaint that unquestionably alleges "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security nonetheless can escape the application of SLUSA by including other allegations that are farther removed from a covered securities transaction.

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners Willis Limited, Willis of Colorado, Bowen, Miclette & Britt, Inc., and SEI Investments Company were defendants in two separate actions in the district court and appellees in a consolidated action in the court of appeals.

The Willis Respondents are the following individuals who were plaintiffs in the district court action in which Willis Limited, Willis of Colorado, and Bowen, Miclette & Britt, Inc. were defendants and appellants in the consolidated action in the court of appeals: Samuel Troice; Martha Diaz; Paula Gilly-Flores; Punga Punga Financial, Ltd., individually and on behalf of a class of all others similarly situated; Promotora Villa Marino, CA; Daniel Gomez Ferreiro; and Manuel Canabal.

The SEI Respondents are the following individuals who were plaintiffs in the district court action in which SEI Investments Company was a defendant and appellants in the consolidated action in the court of appeals: James Roland; Susan Roland; Michael J. Giambrone; Thomas E. Bowden, individually and on behalf of the Thomas E. Bowden SEP IRA; T.E. Bowden Sr. Ret. Trust; G. Kendall Forbes, individually and on behalf of G. Kendall Forbes IRA; Deborah S. Forbes, individually and on behalf of the Deborah S. Forbes IRA; William Bruce Johnson on behalf of the Benton Bruce Johnson Trust #1; William Bruce Johnson on behalf of the Mark Calvin Johnson Trust #1; William Bruce Johnson on behalf of the Martha J.C. Johnson GEN SKPG TR-SAS; William Bruce Johnson on behalf of the Aimee Lynn Johnson Trust #1-SAS; William

Bruce Johnson on behalf of the Benton B. Johnson TEST TR II-SAS; Terence Beven, individually and on behalf of Terrence Beven IRA; Thomas J. Moran; Ralph D. D'Amore, individually and on behalf of FBO Ralph Daniel D'Amore MD, A Professional Corporation; Ralph D. D'Amore IRA; Daniel P. Landry, individually and on behalf of Daniel P. Landry IRA; Ronald R. Marston, individually and on behalf of Ronald R. Marston IRA; Rodney P. Starkey, individually and on behalf of Rodney P. Starkey IRA; Stephen Wilson, individually and on behalf of Bone and Joint Clinic FBO Stephen Wilson; Jeanne Anne Mayhall, individually and on behalf of Microchip ID Services Inc. Retirement Plan; John Wade, individually and on behalf of Microchip ID Services Inc. Retirement Plan; Lynn J. Philippe, individually and on behalf of Lynn J. Philippe IRA; Leah Farr; Troy Lillie; Kenneth Dougherty; Charles White; Martha Jean Witmer; Sharon Witmer; Olivia Sue Warnock; Clyde J. Chisholm; Ronald McMorris; Arthur Ordoyne; William Dawson; Terry Tullis; James Stegall; Anthony Ventrella; Robert Smith; Thomas Slaughter; Larry Perkins; William Phillips; Charles Hart; Richard Feucht; Lonnie Ordoyne; Arthur Waxley; Darrell Courville; Merrill Laplante; James Brown; Ira Causey; Jerry Burris; Jacqueline Millet; Louis Mier; Mamie Baumann; Charles Sanchez; Joseph Chustz; Robert Bush; Bobby Nix; Claude Marquette; Gwen Fabre; Robert Schwendimann; Wanda Bevis; Terry Tarver; Marcel Dumestre; Ronald Valentine; Bennie O'Rear; Julie Savoy; Laura Lee; Dennis Kirby; Billie Ruth McMorris; Larry Smith; Kenneth Wilkewitz; Murphy Buell; Kerry Kling; Lynn Gildersleeve Michelli;

Willa Mae Gildersleeve; Anita Ellen Carter; Fred Demarest; Nancy Gill; Linda Boyd; Virginia Buscheme; Robert Gildersleeve; Walter Stone; Virginia McMorris; Carol Stegall; Monty Perkins; Joan Feucht; Kathleen Mier; Mamie Sanchez; Margaret S. Nix; Margaret Dumestre; Claudia O'Rear; Gordon C. Gill; John Buscheme; Charles Massey; and Gary Magee.

RULE 29.6 STATEMENT

Petitioners Willis Limited and Willis of Colorado, Inc., are indirect, wholly owned subsidiaries of Willis Group Holdings Public Limited Company, a publicly held corporation listed on the New York Stock Exchange. No other publicly held corporation owns 10% or more of Willis Group Holdings' stock.

Petitioner Bowen, Miclette & Britt does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner SEI Investments Company does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

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PETITION FOR CERTIORARI

Petitioners Willis Limited and Willis of Colorado (collectively, "Willis"), Bowen, Miclette & Britt ("BMB"), and SEI Investments Company ("SEI") respectfully submit this petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 675 F.3d 503 and reproduced at Pet.App.1–43. The district court's opinion and order dismissing the action against SEI is reproduced at Pet.App.48–75. The district court's order dismissing the action against Willis and BMB is reproduced at Pet.App.76–77.

JURISDICTION

The Fifth Circuit rendered its decision on March 19, 2012, Pet.App.3, and denied rehearing en banc on April 19, 2012, with three judges recused, Pet.App.46–47. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 101(b) of the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb provides in relevant part:

> **(f) Limitations on remedies**
>
> **(1) Class action limitations**
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private

> party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security....

INTRODUCTION

In the decision below, the Fifth Circuit disregarded the plain text of the Securities Litigation Uniform Standards Act ("SLUSA") and this Court's precedent and, in doing so, expressly refused to follow decisions from the Second and Eleventh Circuits. Certiorari is warranted to resolve this acknowledged circuit split, which—if allowed to stand—will allow securities plaintiffs to easily evade important restrictions on the scope of class or mass action securities fraud claims.

In order to prevent abusive practices and deter vexatious litigation, Congress and this Court have carefully limited the circumstances in which private plaintiffs may bring claims for damages under the federal securities laws. In the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Congress imposed heightened pleading standards in federal securities fraud cases and placed restrictions on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4. This Court has also held, in a series of cases, that claims under Rule 10b-5 may be brought only by those who bought and sold securities (not mere holders), *see Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), and against only primary wrongdoers (not alleged aiders and abettors or other third parties), *see Stoneridge Inv. Partners v. Scientific-Atlanta*, 552 U.S. 148

(2008); *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994).

Many plaintiffs' attorneys sought to evade the PSLRA's restrictions by abandoning federal claims altogether and instead filing class or mass action complaints that were limited to state law securities claims. Congress responded in 1998 by enacting SLUSA, which precludes any state law class or mass actions alleging "a" misrepresentation "in connection with" the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1). This Court has emphasized that a "broad construction" of SLUSA is warranted in light of "the particular concerns that culminated in SLUSA's enactment." *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 86 (2006). In construing the meaning of SLUSA's "in connection with" requirement, the Court has held that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Id.* at 85.

This case arises out of the massive Ponzi scheme perpetrated by Allen H. Stanford and his affiliated corporate entities. Respondents (plaintiffs below) in the action against Willis and BMB are a group of Mexican and Venezuelan citizens who purchased certificates of deposit ("CDs") from the Antigua-based Stanford International Bank ("SIB") based on, among other things, misrepresentations by Stanford and SIB that the CDs were backed by highly liquid, publicly traded securities (*i.e.*, SLUSA-covered securities). Respondents in the action against SEI are a group of U.S. investors who also purchased SIB CDs, and who seek to hold SEI secondarily liable

under the Louisiana Securities Law for alleged misrepresentations made by Stanford and SIB.

Because Allen Stanford and his affiliated companies were insolvent and in receivership, Respondents brought class or mass action complaints against several deep-pocketed third parties with remote connections to Stanford or SIB. For example, Willis is an insurance broker that helped SIB procure ordinary commercial insurance policies. Respondents allege that Willis aided and abetted the Stanford fraud by writing letters accurately confirming that SIB had purchased insurance policies for its own behalf from Lloyd's of London. Other than writing those letters, Respondents do not allege that Willis had any role whatsoever in developing, marketing, or selling the SIB CDs. Similarly, SEI is merely alleged to have had a contract with Stanford Trust Company, a Stanford affiliate, to provide "investing processing," "fund processing," and "business outsourcing solutions" through SEI's proprietary computer software system that it provides to clients.

Respondents did *precisely* what SLUSA sought to prevent: they filed class and mass action complaints under Texas and Louisiana state law alleging claims in connection with securities transactions that, if brought under federal law, would have been subject to the PSLRA's requirements (such as heightened pleading standards), not to mention the limits on private claims against third parties set forth by this Court in *Stoneridge* and *Central Bank*. The district court correctly held that Respondents' covered class action claims were barred by SLUSA. Recognizing that there is a split of authority over the meaning of

SLUSA's "in connection with" requirement, the court chose to follow the Eleventh Circuit's test. Under that standard, a class action is precluded if the plaintiffs' allegations "depend upon" the purchase or sale of SLUSA-covered securities, or if the plaintiffs were "induced" to invest through misrepresentations regarding covered securities. That was plainly the case here, as Respondents specifically alleged that they were induced to purchase SIB CDs based, at least in part, on misrepresentations that those CDs were backed by publicly traded securities.

The Fifth Circuit reversed. In doing so, the Fifth Circuit did something no circuit court has ever done—it refused to apply SLUSA even though it found that the action included a misrepresentation "in connection with" a covered security. The court acknowledged that the misrepresentations at the very core of the Stanford Ponzi scheme—that the SIB CDs were backed by safe, liquid, publicly traded securities—were made "in connection with" the purchase or sale of covered securities. That, by itself, should have been sufficient to trigger SLUSA preclusion under any circuit's standard. But the court did not stop there. It instead concluded that Respondents' complaints were not precluded because they also contained *other* alleged misrepresentations that were not made in connection with a covered securities transaction. In reaching that holding, the Fifth Circuit purported to apply the Ninth Circuit's test (but actually went beyond anything permitted by the Ninth Circuit or any other circuit), and expressly declined to follow decisions from the Second and Eleventh Circuits.

* * *

The Fifth Circuit's decision cannot be squared with the plain text of SLUSA and this Court's decision in *Dabit*. SLUSA unambiguously provides that a state law covered class action is precluded if the complaint alleges "a" misrepresentation in connection with the purchase or sale of a covered security. A single misrepresentation is all that is required. Nothing in SLUSA remotely suggests that a complaint that includes such an allegation can be saved from preclusion if it also includes *other* alleged misrepresentations that are farther removed from a covered securities transaction. And the Fifth Circuit's decision is flatly contrary to this Court's holding that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added).

As the Fifth Circuit, the district court, and several other courts have recognized, there is a split of authority over the meaning of SLUSA's "in connection with" requirement. It is critically important that the Court resolve this split by reversing the decision below. If allowed to stand, the Fifth Circuit's decision will create a gaping loophole in the SLUSA regime by allowing securities plaintiffs to avoid preclusion as long as they load up their complaints with extraneous allegations. Indeed, it will reward plaintiffs for bringing claims that are the least meritorious in the eyes of federal law because they target defendants farther removed from the core fraud, contrary to this Court's decisions in *Central Bank* and *Stoneridge*. That is exactly what is happening here, as Respondents'

counsel has boasted that his goal was to use artful pleading tactics to "get around" *Central Bank* and *Stoneridge*. The Fifth Circuit's decision allowed that gambit to succeed. The petition for certiorari should be granted.

STATEMENT OF THE CASE

A. Congress' Efforts to Prevent Abusive Practices in Securities Litigation

Congress enacted the Private Securities Litigation Reform Act of 1995, P.L. No. 104-67, 109 Stat. 737, in order to combat numerous abusive practices involving securities class action suits. According to the House Conference Report, "nuisance filings, targeting of deep-pocket[ed] defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant." *Dabit*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). The PSLRA sought to prevent these practices by, *inter alia*, imposing heightened pleading standards in federal securities fraud cases, authorizing a stay of discovery pending a motion to dismiss, imposing restrictions on the selection and compensation of lead plaintiffs, and placing limits on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4.

In response to these new restrictions on federal securities claims, many plaintiffs' lawyers abandoned the federal forum altogether and began filing securities class actions in state courts under state law. Congress thus enacted SLUSA in 1998 in order to "prevent certain State private securities

class action lawsuits alleging fraud from being used to frustrate the objectives" of the PSLRA. *See* SLUSA, P.L. No. 105-353 §§ 2(2), (5), 112 Stat. 3227. The central provision of SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). SLUSA does not completely displace state securities law or force individual plaintiffs to assert federal law claims, but instead "makes some state-law claims nonactionable through the class-action device in federal as well as state court." *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 636 n.1 (2006).

This Court has emphasized that a "broad construction" of SLUSA is warranted in light of "ordinary principles of statutory construction" as well as "the particular concerns that culminated in SLUSA's enactment." *Dabit*, 547 U.S. at 86. In particular, the Court has held that the phrase "in connection with" in SLUSA must be given the same, broad interpretation that it has been given in the context of section 10(b) and Rule 10b-5. In *Dabit*, the respondent had argued that an alleged fraud was "in connection with" a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular securities. As a holder of a security, the respondent suggested that his claims, forbidden under federal law, *see Blue Chip Stamps*, 421 U.S. 723, could be maintained as class actions in state court despite SLUSA. The

Court unanimously rejected that argument, holding that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Dabit*, 547 U.S. at 85.

B. The Stanford Ponzi Scheme and Respondents' Complaints

In February 2009, the Securities and Exchange Commission brought suit under the federal securities laws against Allen Stanford and numerous Stanford-affiliated corporate entities, alleging that Stanford had perpetrated a massive Ponzi scheme. The core of this fraudulent scheme involved sales of CDs issued by the Antigua-based Stanford International Bank. SIB maintained a high volume of CD sales by promising above-market returns and assuring investors that the CDs were backed by "safe, secure, and liquid assets," including "first grade investment bonds" and "shares of stock." Willis/BMB Complaint[1] ¶ 34 & Ex.2. In reality, however, Stanford used the proceeds from SIB's CD sales to finance his lavish lifestyle and invest in highly speculative real estate projects in various Caribbean countries. The SEC identified the CDs as securities for purposes of the federal securities laws and alleged multiple violations, including violations of Section 10(b) of the Securities Exchange Act and Rule 10b-5.[2] In addition to the SEC complaint,

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[1] Plaintiffs' Third Amended Class Action Complaint, *Troice v. Willis of Colorado*, No. 3:09-cv-1274-L (N.D. Tex. Apr. 1, 2011).

[2] *See* First Amended Complaint, *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-298-N (N.D. Tex. Feb. 27, 2009).

Stanford also faced criminal charges, and was convicted in March 2012 on 13 counts of fraud, conspiracy, and obstruction of justice; he was recently sentenced to 110 years in prison.

Respondents are individuals and companies that purchased SIB CDs through Stanford subsidiaries in the United States, Mexico, and Venezuela. Respondents did not even attempt to sue Stanford and his affiliated companies, which are now insolvent and in receivership. Instead, Respondents and other plaintiffs cast a wide net in suing deep-pocketed defendants with any tangential connection to Stanford and his frauds. They have now sued a number of individuals, financial services firms, law firms, insurance companies, insurance brokers, and other companies that are alleged to have some remote connection to Stanford or SIB.

In July 2009, the Willis Respondents filed a class action complaint in U.S. District Court for the Northern District of Texas against Willis and BMB.[3] Willis and BMB are insurance brokers that placed certain lines of commercial insurance for SIB. There is no allegation in the Complaint that Willis or BMB knew about Stanford's Ponzi scheme or sold the fraudulent CDs. They merely assisted SIB in procuring ordinary commercial insurance policies, in exchange for standard brokerage fees.

The Willis Respondents' complaint is carefully limited to Texas state law claims, including alleged violations of the Texas Securities Act and Texas

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[3] Respondents also sued two employees of Willis and BMB.

Insurance Code, as well as various common-law claims. The crux of the Willis Respondents' allegations is that Willis and BMB aided and abetted Stanford's fraudulent scheme by drafting letters confirming that SIB had purchased directors-and-officers liability insurance and a bankers' blanket bond from Lloyd's of London. *See* Willis/BMB Complaint ¶¶ 75–90 & Ex.4. Those statements were true, as SIB *did* purchase the insurance products in question from Lloyd's.

The SEI Respondents filed two separate actions in Louisiana state court in August 2009.[4] The nearly identical complaints were brought by more than 80 individual purchasers of SIB CDs who asserted a single claim against SEI under the Louisiana Securities Law. The complaints allege that Stanford employees induced Respondents' purchases of SIB CDs through misrepresentations that SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." According to the complaints, the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." The SEI Respondents seek to hold SEI liable for the alleged Stanford misrepresentations through "secondary liability" principles.

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[4] Those two actions were styled below as *Roland v. Green* and *Farr. v. Green*.

After SEI removed the two actions to the Middle District of Louisiana, they were transferred by order of the Judicial Panel on Multi-district Litigation to the Northern District of Texas. The actions were consolidated by the district court under the *Roland* caption, *Roland v. Green*, No. 10-cv-224 (N.D. Tex.), thereby satisfying the statutory definition of a "covered class action" under SLUSA. 15 U.S.C. § 78bb(f)(5)(B)(ii).

C. The District Court's Decision

The district court dismissed the complaints against Willis, BMB, and SEI, holding that SLUSA applies to Respondents' state law class action claims. *See* Pet.App.75, 76–77. The court held in *Roland v. Green* that the claims against SEI were precluded, and it subsequently applied the same reasoning to dismiss Respondents' claims against Willis and BMB.

The plaintiffs first argued that SLUSA was categorically inapplicable because the SIB CDs were not themselves covered securities. The district court acknowledged that "the SIB CDs are not covered securities under SLUSA," but emphasized that this fact "does not end the SLUSA inquiry." Pet.App.62. As the district court explained, this Court has expressly rejected the argument that "'an alleged fraud is "in connection with" a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular securities.'" Pet.App.62–63 (quoting *Dabit*, 547 U.S. at 85). The district court thus concluded that "SLUSA do[es] not require actual dealing in ascertainable securities." Pet.App.63 (citing *Grippo*

v. Perazzo, 357 F.3d 1218, 1223 (11th Cir. 2004)). The fact that the CDs' value was dependent on representations that they were backed by covered securities sufficed to make SLUSA applicable.[5]

Turning to the question presented in this case, the district court noted that "[c]ourts have come to varying conclusions on what 'in connection with' requires." Pet.App.61. In light of "this mélange of opinions and in the absence of controlling Fifth Circuit authority," the court chose to adopt the Eleventh Circuit's test, which asks whether the plaintiffs' claims are premised on either "'fraud that induced [the plaintiffs] to invest with [the defendants] ... or a fraudulent scheme that coincided and depended upon the purchase or sale of securities.'" Pet.App.65 (quoting *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) ("*IPM*")).

According to the complaint, "SIB led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities." Pet.App.66. That belief, in turn, "induced the Plaintiffs to purchase SIB CDs." *Id.* Applying the Eleventh Circuit's "induced or depended" test, the district court concluded that the alleged misrepresentations were made "in connection

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[5] *See Newman v. Family Mgmt. Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010) (holding that "misrepresentations related to non-covered limited partnership interests" were covered by SLUSA because "the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud'").

with" the purchase or sale of a covered security. The court also relied upon numerous district court decisions holding that SLUSA applied to suits arising out of the Bernard Madoff Ponzi scheme. As the court explained, "[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67–68 n.12. Thus, any suit against third parties arising out of those schemes necessarily involves misrepresentations in connections with covered securities transactions.

The district court accordingly held that SLUSA "precludes this action" against SEI. Pet.App.75. Citing its decision in *Roland*, the district court also dismissed the plaintiffs' state law covered class actions against Willis and BMB, without prejudice to refiling individual claims. Pet.App.76–77.

D. The Fifth Circuit's Decision

Both the Willis Respondents and the SEI Respondents appealed the district court's decision. The Fifth Circuit consolidated the appeals and reversed. In articulating its view of the meaning of "in connection with" under SLUSA, the court described the test set forth in *Dabit*—that the alleged fraud must "coincide" with a covered securities transaction—as "not particularly descriptive." Pet.App.17. The Fifth Circuit thus canvassed the disparate decisions of other courts to formulate the relevant standard.

The Fifth Circuit described the Eleventh Circuit's test—which asks "whether the plaintiffs thought they were investing in covered securities or investing because of (representations about) transactions in

covered securities"—as a "good starting point." Pet.App.30–31. The court nonetheless concluded that this standard "asks the wrong question" because it "unnecessarily imports causation into a test whose language ('coincide') specifically disclaims it." Pet.App.31–32.

The Fifth Circuit instead endorsed a "defendant-oriented perspective" that focuses on "the relationship between the defendants' fraud and the covered securities transaction without regard to the fraud's effect on the plaintiffs." Pet.App.32. In doing so, the court explicitly declined to follow decisions from the Second and Eleventh Circuits holding that SLUSA preclusion was appropriate where the alleged fraud "'necessarily involve[d]'" or "'depended upon'" the purchase or sale of covered securities. Pet.App.32–33 (quoting *IPM*, 546 F.3d at 1349; *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010)). The Fifth Circuit believed that this standard was "too stringent," citing Sixth and Eighth Circuit decisions suggesting that this was "too high a bar." Pet.App.32–33 (citing *Segal v. Fifth Third Bank*, 581 F.3d 305, 310 (6th Cir. 2009); *Siepel v. Bank of America*, 526 F.3d 1122, 1127 (8th Cir. 2008)).

The court ultimately found the "best articulation" of the "in connection with" requirement to be the Ninth Circuit's test, under which "'a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*.'" Pet.App.33 (quoting *Madden v. Cowen & Co.*, 576 F.3d 957, 965–66 (9th Cir. 2009)). The Fifth Circuit believed that this formulation would ensure that the

"in connection" requirement was not "'construed so broadly as to [encompass] every common-law fraud that happens to involve [covered] securities.'" Pet.App.33 (quoting *SEC v. Zandford*, 535 U.S. 813, 820 (2002)).

The court purported to apply the Ninth Circuit's test, but actually went further than the Ninth Circuit in holding that SLUSA did not preclude Respondents' complaints. The Fifth Circuit acknowledged that "the CDs' promotional material touted that SIB's portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies, and major international banks.'" Pet.App.36. It nonetheless found that this was "but one of a host of (mis)representations made to the Appellants in an attempt to lure them into buying the worthless CDs." Pet.App.36–37 (footnote omitted). Even though Respondents' complaint unquestionably alleged misrepresentations "in connection with" the purchase or sale of a covered security, the court held that those allegations were not controlling because they were only "tangentially related" to the "heart," "crux," or "gravamen" of the alleged fraud. Pet.App.37–38. And the court reached this conclusion even though the complaints described the misrepresentations about the liquidity and marketability of SIB's invested assets as so important that, had plaintiffs "'been aware of the truth' that SIB's 'portfolio consisted primarily of illiquid investments or no investments at all,' they 'would not have purchased the SIB CDs.'" Pet.App.12. In sum, the court held that SLUSA did not apply because the fact that "the CDs were

marketed with some vague references to SIB's portfolio containing the instruments that might be SLUSA-covered securities seems tangential to the schemes advanced by the SEI and Willis Defendants." Pet.App.38.

Willis, BMB, and SEI subsequently filed petitions for rehearing en banc, which the court denied on April 19, 2012, with three judges (Chief Judge Jones, Judge Smith, and Judge Haynes) recused. Pet.App.46–47.

REASONS FOR GRANTING THE PETITION

This petition presents an ideal opportunity for the Court to resolve the acknowledged circuit split over the meaning of SLUSA's "in connection with" requirement. That issue is both squarely presented and outcome determinative. The district court dismissed Respondents' claims under the Eleventh Circuit's "inducement" test, and the Fifth Circuit reversed, purporting to apply the Ninth Circuit's test and expressly rejecting the Eleventh Circuit's test (and the Second Circuit's similar test). Certiorari is warranted to resolve this circuit split and prevent the Fifth Circuit's unduly cramped reading of SLUSA from creating a significant loophole that will allow plaintiffs to evade the limits on private class action securities fraud claims established by Congress and this Court.

I. THE COURT SHOULD GRANT CERTIORARI TO CLARIFY THE PROPER STANDARD FOR APPLICATION OF SLUSA PRECLUSION

A. The Fifth Circuit's Decision Conflicts with the Plain Text of SLUSA and this Court's Decision in *Dabit*

1. SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). Respondents are indisputably seeking to bring a "covered class action" under Texas and Louisiana state law alleging "a misrepresentation or omission of a material fact."[6] The sole issue on appeal is whether the misrepresentation or omission pled was made "in connection with" the purchase or sale of a covered security. It plainly was.

In their complaints, Respondents allege that they purchased SIB CDs based on misrepresentations by SIB and other Stanford-affiliated entities that the CDs were backed by highly liquid, publicly traded securities. For example, according to the

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[6] The definition of a "covered class action" under SLUSA includes "any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which— (I) damages are sought on behalf of more than 50 persons; and (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose." 15 U.S.C. § 78bb(f)(5)(B)(ii).

Willis/BMB complaint, "Stanford Financial led Plaintiffs, verbally and through written marketing materials ... to believe that their money was being invested in *safe, liquid investments* that were insured, *which was a material misstatement.*" Willis/BMB Complaint ¶ 180 (emphasis added); *see also id.* Ex. 2 (marketing materials asserting that SIB's investment portfolio included "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity, and credibility)"); SEI Complaint[7] ¶ 20 (Stanford investment advisors induced plaintiffs to purchase SIB CDs based on the representation that the CDs were "'invested in a well-diversified portfolio of highly marketable securities issued by stable government, strong multinational companies and major international banks'").[8] These alleged misrepresentations regarding SLUSA-covered securities were at the very core of the Stanford Ponzi scheme, and were the primary reason why Respondents believed the SIB CDs had greater value

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[7] Plaintiffs' Original Petition, *Roland v. Green*, No. 3:10-cv-224 (N.D. Tex. Aug. 21, 2009) (filed as Ex. A to Defendants' Notice of Removal).

[8] The Department of Justice has similarly noted that "[a]ccording to SIB's annual reports and marketing brochures, the bank purportedly invested CD proceeds in highly conservative, marketable securities that were also highly liquid, meaning the bank could sell its assets and repay depositors very quickly." Press Release, DOJ, *Allen Stanford Sentenced to 110 Years in Prison for Orchestrating $7 Billion Investment Fraud Scheme* (June 14, 2012).

than other bank CDs with lower returns, and accordingly purchased them.

The Fifth Circuit recognized that: (1) the complaints alleged a fraudulent scheme "to lure [Respondents] into buying the worthless CDs"; and (2) this scheme involved misrepresentations in connection with the purchase or sale of covered securities. *See* Pet.App.36–37 (noting SIB's false assertion that its "portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies, and major international banks'"). [9] Those allegations of fraud in connection with a covered securities transaction should have been the end of the matter for purposes of SLUSA.

But the Fifth Circuit did not stop there. It instead concluded that the presence of *additional* alleged misrepresentations in Respondents' complaints somehow diluted or rendered irrelevant the misrepresentations that unquestionably fell within SLUSA. *See* Pet.App.37–39. In other words, the Fifth Circuit refused to apply SLUSA even

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[9] Because the purpose of the CDs was to invest in SLUSA-covered securities, it is irrelevant whether the CDs *themselves* were "covered securities." *See Newman*, 748 F. Supp. 2d at 312 (holding that "misrepresentations related to non-covered limited partnership interests may be nonetheless 'in connection with' covered securities where the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud'") (quoting *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 430 (S.D.N.Y. 2010)).

though it found a misrepresentation "in connection with" a covered security.

That holding cannot be squared with the text of the statute, which precludes any state law covered class action alleging "a" misrepresentation or omission in connection with the purchase or sale of a covered security. The Fifth Circuit effectively rewrote the statute by limiting SLUSA preclusion to complaints that *predominantly* allege misrepresentations in connection with transactions in covered securities. But the actual statute is written in the singular: "a" misrepresentation in connection with a covered securities transaction is sufficient to trigger preclusion, particularly where, as here, that misrepresentation is central to the alleged fraudulent scheme. Adding additional allegations about events farther removed from the core fraud should not allow a plaintiff to escape SLUSA.

The Fifth Circuit further erred by focusing narrowly on the alleged misstatements attributed to *Petitioners* (third parties far removed from the actual fraud), while ignoring the alleged misstatements made by the primary violators at the heart of the fraudulent scheme (SIB and other Stanford-affiliated entities). That approach disregards the text of the statute and creates a perverse incentive to pursue parties far removed from the core fraud. SLUSA preclusion is not limited to alleged misstatements made *by the defendants*; the statute broadly precludes state law class actions alleging *any* misrepresentation "in connection with" the purchase or sale of covered securities. 15 U.S.C. § 78bb(f)(1)(A). Indeed, the very next clause of the

statute is more limited, barring state law class actions alleging "that *the defendant* used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(B) (emphasis added). But no such limitation is present in the clause at issue here, and Congress' careful choice of words must be given effect.

In sum, the Fifth Circuit erred by focusing myopically on Petitioners' alleged misstatements while ignoring the SLUSA-covered misstatements by Stanford and SIB that were at the heart of the Ponzi scheme and were a necessary ingredient in the plaintiffs' losses and claims against tangential third parties.

2. The Fifth Circuit's approach not only disregards the text of SLUSA, but is also inconsistent with this Court's decision in *Dabit*. In that case, the plaintiffs brought state law "holder" claims, alleging that the defendants' misrepresentations caused them to refrain from selling overvalued securities. 547 U.S. at 76. The plaintiffs argued that SLUSA did not preclude their claims because they were too far removed from a covered securities transaction. This Court unanimously rejected that overly narrow reading of the statute, emphasizing that a "broad construction" of the preclusion provision is warranted in light of "the particular concerns that culminated in SLUSA's enactment." *Id.* at 86. The Court thus held that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff *or by someone else*." *Id.* at 85 (emphasis added). The "requisite showing" is "deception in connection with

the purchase or sale of any security, not deception of an identifiable purchaser or seller." *Id.* at 85; *see also id.* at 89 (SLUSA preclusion does not turn on "the identity of the plaintiffs").

This case is the mirror image of *Dabit*. In that case, the plaintiffs asserted that *they* were too far removed from a covered transaction for SLUSA to apply, while Respondents here assert that the *defendants* are too far removed from a covered securities transaction. That gambit failed in *Dabit* and it should fare no better here. The Fifth Circuit held that an alleged misrepresentation is "in connection with" the purchase or sale of a covered security only if it goes to the "heart," "crux," or "gravamen" of *the defendant's* alleged fraud. Pet.App.37–38. But that holding flouts this Court's reasoning in *Dabit*. Given that Respondents have unquestionably alleged "a" misrepresentation in connection with a covered securities transaction—namely, SIB's false statement that the CDs were backed by liquid, publicly traded securities—it simply does not matter whether that alleged misrepresentation was made by "the [defendant] *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added). The "requisite showing" is "deception in connection with the purchase or sale of any security, not deception [by] an identified [defendant]." *Id.* at 85.

B. The Fifth Circuit's Decision Conflicts with the Decisions of Other Circuits

Both the Fifth Circuit and the district court acknowledged that the lower courts are split over the meaning of SLUSA's "in connection with"

requirement. *See* Pet.App.30–33 (expressly rejecting Second and Eleventh Circuits' tests and finding the Ninth Circuit's test to be the "best articulation" of the standard); Pet.App.61 (courts have "come to varying conclusions on what 'in connection with' requires"). That conflict of authority is well-documented and is outcome determinative here.

1. The Eleventh Circuit has emphasized that nothing in SLUSA requires a court to "act like a prospector panning for a few non-precluded theories amid a river of precluded ones." *IPM*, 546 F.3d at 1350. Under the Eleventh Circuit's standard, the critical inquiry is whether the complaint alleges "fraud that induced [the plaintiff] to invest with [the defendant] or a fraudulent scheme that coincided and depended upon the purchase or sale of securities." *Id.* at 1349. In *IPM*, the plaintiffs lost money in a scheme in which the primary fraudster claimed to be investing their money but was actually embezzling it (as Allen Stanford did here). The plaintiffs did not sue that company, but instead brought a state law class action against Merrill Lynch, alleging that Merrill had aided and abetted the fraud. The Eleventh Circuit held that those claims were barred by SLUSA because the complaint alleged misrepresentations that "induced [the plaintiffs] to invest with [the primary fraudster]." *Id.* at 1349; *see also id.* at 1350 (complaint further alleged that Merrill "failed to stop the fraudulent misrepresentations that induced" the plaintiff to invest).

The Second Circuit has adopted a similar test, holding that a state law class action is precluded if the "plaintiff's claims 'necessarily allege,' 'necessarily

involve,' or 'rest on' the purchase or sale of securities." *Romano*, 609 F.3d at 522. In *Romano*, the plaintiffs were a class of Kodak retirees who alleged that the defendants gave them faulty investment advice. The plaintiffs attempted to plead around SLUSA by downplaying their investment losses and instead arguing that the defendants induced them to retire early based on misrepresentations about returns on their retirement assets. *Id.* at 523–24. The court was not fooled, holding that "at the end of the day, this is a case where defendants' alleged misrepresentations induced [plaintiffs] to retire early, receive lump sum benefits, and invest their retirement savings with defendants." *Id.* at 524. Because "both the misconduct complained of, and the harm incurred, rest[] on and arise[] from securities transactions, SLUSA applies." *Id.*

The Sixth Circuit has emphasized that plaintiffs may not "avoid [SLUSA's] application through artful pleading that removes the covered words from the complaint but leaves in the covered concepts." *Segal*, 581 F.3d at 311. In contradiction with the Fifth Circuit's holding here, the court emphasized that SLUSA "does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentations in connection with buying or selling securities." *Id.* It instead "asks whether the complaint *includes* these types of allegations, pure and simple." *Id.* (emphasis added); *see also id.* at 312 (noting that "[t]he terms of SLUSA do not speak

to 'material,' 'dependent' or 'extraneous' allegations").[10]

The Ninth Circuit, in contrast, has adopted something akin to a proximate cause standard, under which "a misrepresentation is 'in connection with' the purchase or sale of securities if there is 'a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*.'" *Madden*, 576 F.3d at 965–66. The Seventh Circuit has not articulated a specific test, but has stated that a "but-for" relationship is insufficient, and that the "in connection with" requirement must be taken "'seriously.'" *Gavin v. AT&T Corp.*, 464 F.3d 634, 639–40 (7th Cir. 2006).

2. This well-documented circuit split is not merely semantic. The district court applied the Eleventh Circuit's "induced or depended" test and concluded that Respondents' claims were precluded because Respondents were induced to invest in SIB CDs based on misrepresentations that the CDs were backed by SLUSA-covered securities. Pet.App.64–67. The Fifth Circuit rejected the Eleventh Circuit's (and Second Circuit's) test and reversed. Pet.App.32–33. The test was and is outcome determinative.

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[10] The Fifth Circuit cited the Sixth Circuit's decision in *Segal* with approval, *see* Pet.App.32–33, which is surprising given that the Sixth Circuit expressly refused to do what the Fifth Circuit did here—namely, parse the complaint to determine whether unquestionably covered misrepresentations were too far removed from the defendant's conduct to give rise to preclusion. *See Segal*, 581 F.3d at 311–12.

There is no question that this case would have come out differently had it arisen in the Second Circuit, where the test is whether the plaintiff's claims "necessarily allege," "necessarily involve," or "rest on" the purchase or sale of SLUSA-covered securities. *Romano*, 609 F.3d at 522. Applying that test, district courts in the Second Circuit have repeatedly held that claims against third parties arising out of the Bernard Madoff Ponzi scheme are barred by SLUSA.[11] The Madoff and Stanford schemes are essentially identical—in both sets of cases, the plaintiffs were induced to invest with the fraudsters based on false promises that their funds would be invested in SLUSA-covered securities. As the district court noted, "[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67–68 n.12.

The circuit split is well-illustrated by *In re Herald, Primeo & Thelma Sec. Litig*, No. 09-289,

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[11] *See, e.g., In re Merkin*, 817 F. Supp. 2d 346, 360–61 (S.D.N.Y. 2011); *In re Kingate Mgmt. Litig.*, No. 09-5386, 2011 WL 1362106, at *9 (S.D.N.Y. Mar. 30, 2011); *Backus v. Conn. Cmty. Bank*, 789 F. Supp. 2d 292, 302–06 (D. Conn. 2011); *Newman*, 748 F. Supp. 2d at 313; *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d at 430; *Wolf Living Trust v. FM Multi-Strategy Inv. Fund*, No. 09-1540, 2010 WL 4457322, at *3 (S.D.N.Y. Nov. 2, 2010). Two courts have adopted the minority view that SLUSA is inapplicable to Madoff-related claims against third parties, but those decisions only reinforce the stark division of authority over the proper standard for finding SLUSA preclusion. *See Levinson v. PSCC Servs., Inc.*, No. 09-269, 2010 WL 5477250 (D. Conn. Dec. 29, 2010); *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372 (S.D.N.Y. 2010).

2011 WL 5928952 (S.D.N.Y. Nov. 29, 2011), a case arising out of the Madoff fraud with facts strikingly similar to this case. The plaintiffs in that case sued Bernard Madoff's bankers (J.P. Morgan and the Bank of New York), alleging that they aided and abetted Madoff's fraud, failed to disclose relevant information, and ignored warning signs of fraudulent conduct. But, unlike the Fifth Circuit here, the court in *Herald* did not parse the complaint searching for non-precluded allegations against the third-party defendants. Instead, applying the Second Circuit's test, the court concluded that "[i]t is clear that [plaintiffs'] claims against [defendants] are 'in connection with' Madoff's fraud in that they 'necessarily allege, necessarily involve, or rest' on Madoff's purported intention to purchase and sell covered securities." *Id.* at *5–*8 (quoting *Romano*, 609 F.3d at 521–22). Regardless of any *additional* alleged misrepresentations that could be pled in an effort to implicate third-party defendants, the core Madoff fraud involved misrepresentations in connection with covered securities transactions, which was, by itself, sufficient to trigger preclusion. There is no question that the instant case would have been decided differently under the reasoning of the Madoff-related cases in the Second Circuit.

II. THE FIFTH CIRCUIT'S DECISION UNDERMINES CONGRESS' POLICY JUDGMENTS AND THIS COURT'S DECISIONS IN *CENTRAL BANK* AND *STONERIDGE*

This Court has repeatedly looked to policy considerations in interpreting the meaning of SLUSA and Rule 10b-5. In *Dabit*, for example, the Court relied on "the particular concerns that

culminated in SLUSA's enactment," noting that "[a] narrow reading of the statute would undercut the effectiveness" of the Act. 547 U.S. at 86; *see also id.* at 84 (noting that, in *Blue Chip Stamps*, 421 U.S. at 737, the Court "relied chiefly, and candidly, on 'policy considerations'" in limiting the scope of the private right of action under Rule 10b-5)). The Fifth Circuit's decision directly undermines two key policy considerations underlying the federal securities statutes and this Court's securities law jurisprudence: (1) preventing extension of securities fraud liability to third-party actors; and (2) preventing plaintiffs from using artful pleading to evade restrictions on federal securities claims.

First, this Court has consistently refused to extend private liability under the federal securities laws to third-party actors such as aiders and abettors. The Court was unwilling to expose a "new class of defendants" to the "uncertainty and disruption" that inevitably results from lawsuits alleging "weak claims to extort settlements from innocent companies. *Stoneridge*, 552 U.S. at 163–66. Indeed, "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets." *Central Bank*, 511 U.S. at 188. Securities fraud litigation "requires secondary actors to expend large sums even for pretrial defense and the negotiation of settlements." *Id.* at 189. This "uncertainty and excessive litigation" causes "ripple effects" that fall the hardest on "newer and smaller companies" and

professional services firms that may be the targets of third-party securities fraud claims. *Id.*[12]

Here, because the actual perpetrators of the alleged fraud—Allen Stanford and his affiliated corporate entities—were all insolvent, Respondents and other plaintiffs sued a number of deep-pocketed third-party actors that only had some tangential connection to Stanford or SIB. None of those third-party actors bought, sold, brokered, marketed, or otherwise traded in the SIB CDs.

But while this Court's cases prohibit efforts to extend private securities liability to third parties only tangentially related to the principal fraud, the Fifth Circuit's narrow interpretation of SLUSA rewards such efforts. The farther removed a named defendant is from the actual fraud that caused the plaintiff's loss, the more additional misrepresentations the plaintiff will need to add to implicate the third-party defendant. The Fifth Circuit rewards those efforts by deeming the core fraud in connection with covered securities to be tangential to the misrepresentations alleged against the third-party defendant. Thus, the Fifth Circuit's decision actually makes it *easier* to bring state law class actions against third parties far removed from

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[12] *See also Regents of Univ. of Cal. v. Credit Suisse First Boston*, 482 F.3d 372, 386 (5th Cir. 2007) ("In *Central Bank*, the Court emphasized that securities fraud liability is an area of the law that demands certainty and predictability. Secondary liability brings neither; instead, it gives rise to confusion about the extent of secondary actors' obligations and invites vague and conflicting standards of proof in diverse courts.").

the actual fraud than to bring such claims against the primary wrongdoers. That paradoxical result cannot be squared with this Court's consistent refusal to extend securities law liability to third-party actors.

Second, the express purpose of SLUSA was to prevent plaintiffs from using artful pleading to evade the heightened barriers on private securities fraud litigation that Congress enacted in the PSLRA. As the Court explained in *Dabit*, a "narrow reading" of SLUSA would "run contrary to SLUSA's stated purpose, viz., 'to prevent certain State private securities class action lawsuits ... from being used to frustrate the objectives' of the [PSLRA]." 547 U.S. at 86 (quoting 112 Stat. 3227, § 2(5)). In particular, the PSLRA "prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether," and SLUSA was intended to "stem this 'shif[t] from Federal to State courts." *Id.* at 82.

As noted, this Court did not allow the plaintiffs in *Dabit* to circumvent SLUSA, the PSLRA and *Blue Chip Stamps*' rejection of holder claims by bringing holder class actions in state court. The Court recognized that the holder plaintiffs might be farther removed from a transaction in a covered security, but they nonetheless alleged misrepresentation "in connection with" a covered security. But claims against tangential defendants should fare no better than claims by tangential plaintiffs. Nonetheless, the Fifth Circuit has adopted a rule that, if allowed to stand, will permit plaintiffs to circumvent SLUSA, the PSLRA, *Stoneridge*, and *Central Bank*.

This case is a prime example of the gamesmanship Congress sought to prevent when it enacted SLUSA. If brought under federal law, Respondents' aiding and abetting claims against Willis, SEI, and other third parties would be barred by *Stoneridge* and *Central Bank*. Respondents thus limited their complaint to Texas and Louisiana state law claims. There is no need to speculate about their motivation for doing so: The Willis Respondents' counsel has told us the reason. He boasted to the press that he limited the complaint to "claims under state law" in order to "get around the U.S. Supreme Court's rulings in [*Central Bank*] and [*Stoneridge*], which have been the death knell to federal securities law claims against third party advisors to accused fraudsters."[13] The Fifth Circuit's decision vindicates Respondents' strategy of using artful pleading tactics to "get around" SLUSA and this Court's jurisprudence. The decision should not be allowed to stand.

CONCLUSION

The Court should grant the petition.

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[13] Julie Triedman, *Fifth Circuit Green-Lights $7 Billion Claims Against Proskauer, Other Stanford Advisers*, AmLaw Daily (Mar. 20, 2012).

Respectfully submitted,

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July 18, 2012

APPENDIX

TABLE OF APPENDICES

Appendix A

Opinion of the United States Court of Appeals for the Fifth Circuit, No. 11-10932 (Mar. 20, 2012) App-1

Appendix B

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 11-10932

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and On Behalf Of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,

Plaintiffs-Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,

Defendants-Appellees

LEAH FARR; ET AL,

Plaintiffs-Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,

Defendants-Appellees

Consolidated with No. 11-11031

SAMUEL TROICE; HORACIO MENDEZ; ANNALISA MENDEZ; PUNGA PUNGA FINANCIAL, LIMITED, individually and on behalf of a class of all others similarly situated,

Plaintiffs-Appellants

v.

PROSKAUER ROSE, L.L.P.; THOMAS V. SJOBLOM; P. MAURICIO ALVARADO; CHADBOURNE AND PARKE, L.L.P.,

Defendants-Appellees

Consolidated with No. 11-11048

SAMUEL TROICE; MARTHA DIAZ; PAULA GILLY-FLORES; PUNGA PUNGA FINANCIAL, LIMITED, Individually and on behalf of a class of all others similarly situated; PROMOTORA VILLA MARINO, CA; DANIEL GOMEZ FERREIRO; MANUEL CANABAL,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO INCORPORATED; WILLIS GROUP HOLDINGS LIMITED; AMY S. BARANOUCKY; ROBERT S. WINTER; BOWEN, MICLETTE & BRITT, INCORPORATED; WILLIS LIMITED,

Defendants-Appellees

Appeals from the United States District Court for the Northern District of Texas

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FILED: March 19, 2012
REVISED: March 20, 2012

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

EDWARD C. PRADO, Circuit Judge:

This consolidated appeal arises out of an alleged multi-billion dollar Ponzi scheme perpetrated by R. Allen Stanford through his various corporate entities. These three cases deal with the scope of the

preclusion provision of the Securities Litigation Uniform Standards Act ("SLUSA"). That provision states: "No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). All three cases seek to use state class-action devices to attempt to recover damages for losses resulting from the Stanford Ponzi scheme. Because we find that the purchase or sale of securities (or representations about the purchase or sale of securities) is only tangentially related to the fraudulent schemes alleged by the Appellants, we hold that SLUSA does not preclude the Appellants from using state class actions to pursue their recovery and REVERSE.

I

A

In 1995, because of "perceived abuses of the class-action vehicle in litigation involving nationally traded securities," Congress passed the Private Securities Litigation Reform Act ("PSLRA"). *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006). "Its provisions limit recoverable damages and attorney's fees, provide a 'safe harbor' for forward-looking statements, impose new restrictions on the selection of (and compensation awarded to) lead plaintiffs, mandate imposition of sanctions for frivolous litigation, and authorize a stay of discovery pending resolution of any motion to dismiss." *Id.* (citing 15 U.S.C. § 78u-4). These

reforms were enacted to combat the "rampant" "nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests," and manipulation of clients by class counsel in securities litigation. *Id.* (citing H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). Perhaps the most consequential reform, however, was that the PSLRA "impose[d] heightened pleading requirements in actions brought pursuant to § 10(b) [of the Securities and Exchange Act of 1934] and Rule 10b-5." *Id.*

The reforms had their intended effect, "[b]ut the effort also had an unintended consequence: It prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether." *Id.* at 82. "[R]ather than confronting the restrictive conditions set forth by the PSLRA, plaintiffs began filing class-action securities lawsuits under state law, often in state court." *In re Enron Corp. Secs.*, 535 F.3d 325, 337 (5th Cir. 2008) (citing *Dabit*, 547 U.S. at 82). "To stem this shift from Federal to State courts and prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the [PSLRA], Congress enacted SLUSA." *Dabit*, 547 U.S. at 82 (internal quotation marks omitted).

"The stated purpose of SLUSA is 'to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives' of the PSLRA . . . [by advancing] 'the congressional preference for national standards for securities class action lawsuits involving nationally traded securities.'" *In re Enron*, 535 F.3d at 338 (quoting *Dabit*, 547 U.S. at 86–87). Specifically, the "core provision," *Dabit*, 547 U.S. at 82, provides that

"[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security."[1] 15 U.S.C. § 78bb(f)(1)(A). To effectuate this, SLUSA mandates: "Any covered class action brought in any State court involving a covered security . . . shall be removable to the Federal district court for the district in which the action is pending" and subject to dismissal. *Id.* at § 78bb(f)(2).

B

In February 2009, the Securities and Exchange Commission ("SEC") brought suit against the Stanford Group Company, along with various other Stanford corporate entities, including the Antigua-based Stanford International Bank ("SIB"), for allegedly perpetrating a massive Ponzi scheme.

> According to the SEC, the companies' core objective was to sell certificates of deposit ("CDs") issued by SIB. Stanford achieved and maintained a high volume of CD sales by promising above-market returns and

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[1] Although various courts have referred to this provision as a preemption provision, *see, e.g.*, *Dabit*, 547 U.S. at 74; *In re Enron*, 535 F.3d at 341, the Supreme Court has said that because SLUSA "does not itself displace state law with federal law but makes some state-law claims nonactionable through the class-action device in federal as well as state court," the provision is best characterized as a preclusion provision. *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 637 n.1 (2006).

> falsely assuring investors that the CDs were backed by safe, liquid investments. For almost 15 years, SIB represented that it consistently earned high returns on its investment of CD sales proceeds. . . . In fact, however, SIB had to use new CD sales proceeds to make interest and redemption payments on pre-existing CDs, because it did not have sufficient assets, reserves and investments to cover its liabilities.
>
> . . . At the SEC's request, the district court issued a temporary order restraining the payment or expenditure of funds belonging to the Stanford parties. The district court also appointed [a] Receiver for the Stanford interests and granted him the power to conserve, hold, manage, and preserve the value of the receivership estate.

Janvey v. Alguire, 647 F.3d 585, 590 (5th Cir. 2011) (internal quotation marks omitted). Lastly, the district court in the SEC action entered a case management order requiring all lawsuits against SIB's service providers or third parties to be filed as ancillary proceedings to the SEC action.

1

Two groups of Louisiana investors, represented by the same counsel, filed separate lawsuits in the 19th Judicial District Court, East Baton Rouge Parish on August 19, 2009—*Roland v. Green* and *Farr v. Green*. In those actions, each set of plaintiffs sued the SEI Investments Company ("SEI"), the Stanford Trust Company (the "Trust"), the Trust's employees, and the Trust's investment advisors

(collectively, the "SEI Defendants") for their alleged role in the Stanford Ponzi scheme. The plaintiffs alleged violations of Louisiana law including breach of contract, negligent representation, breach of fiduciary duty, unfair trade practices, and violations of the Louisiana Securities Act.

The plaintiffs in the *Roland* and *Farr* actions (the "*Roland* Plaintiffs") allege that SIB sold CDs to the Trust (located in Baton Rouge, Louisiana), which in turn served as the custodian for all individual retirement account ("IRA") purchases of CDs. According to the plaintiffs, the Trust contracted with SEI to have SEI be the administrator of the Trust, thereby making SEI responsible for reporting the value of the CDs. Plaintiffs finally allege misrepresentations by SEI induced them into using their IRA funds to invest in the CDs. Specifically, the plaintiffs allege that the SEI Defendants represented to them that the CDs were a good investment because (1) they could be "readily liquidated"; (2) SEI had evaluated SIB as being "competent and proficient"; (3) SIB "employed a sizeable team of skilled and experienced analysts to monitor and manage [its] portfolio"; (4) "independent" auditors "verified" the value of SIB's assets; (5) the SEI Defendants had "knowledge" about the companies that SIB invested in and that those companies were adequately capitalized; (6) the Antiguan government regularly "examined" SIB; (7) the CDs were a "safe investment vehicle suitable for long term investment with little or no risk"; (8) SIB had "retained legal counsel" that ensured that the investments were structured so as to comply with state and federal law; (9) the CDs

would produce "consistent, double-digit returns"; and (10) SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks."

The SEI Defendants sought removal to the United States District Court for the Middle District of Louisiana on the basis that SLUSA precluded the state court from entertaining the suits. The Multi-District Litigation ("MDL") Panel subsequently transferred the case to the Northern District of Texas (Judge Godbey) where the separate *Roland* and *Farr* suits were consolidated. The *Roland* Plaintiffs then filed a motion to remand their cases back to the Louisiana state court.

2

The *Roland* action has been consolidated on appeal with two other actions. In these cases, a group of Latin American investors (the "*Troice* Plaintiffs") brought two separate class actions against, respectively, SIB's insurance brokers (the "Willis Defendants") and SIB's lawyers (the "Proskauer Defendants"). The *Troice* Plaintiffs brought claims under Texas law—specifically, violations of the Texas Securities Act, aiding and abetting these violations, and civil conspiracy. Similar to the *Roland* Plaintiffs, the *Troice* Plaintiffs allege that the Willis Defendants represented to them that the CDs were a good investment because (1) SIB was based in the United States and "regulated by the U.S. Government"; (2) SIB was "insured by Lloyd's"; (3) SIB was "regulated by the Antiguan banking regulatory commission"; (4) SIB

was "subjected to regular stringent risk management evaluations" conducted by "an outside audit firm"; (5) the CDs were safe and secure; (6) SIB's portfolio produced "consistent, double-digit returns"; (7) the CDs' "high return rates . . . greatly exceed those offered by commercial banks in the United States"; and (8) SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks."

The *Troice* Plaintiffs only alleged aiding and abetting violations of the Texas Securities Act and civil conspiracy against the Proskauer Defendants. That is to say that the *Troice* Plaintiffs did not allege that the Proskauer Defendants made any (mis)representations to them. The *Troice* Plaintiffs sued the Willis Defendants and Proskauer Defendants in separate suits in the United States District Court for the Northern District of Texas, invoking that court's jurisdiction under the Class Action Fairness Act. *See* 28 U.S.C. § 1332 (d)(2)(B). Both suits were assigned to Judge Godbey pursuant to the MDL order. The Willis and Proskauer Defendants moved to dismiss the suits pursuant to SLUSA.

C

Judge Godbey, due to the "multitude of Stanford-related cases" pending before him with similar issues, decided to "select one case initially in which to address the applicability of [SLUSA]." The case the district court chose was *Roland v. Green*. On August 31, 2010, the district court issued its opinion

on the applicability of SLUSA preclusion to the Stanford litigation.

In that opinion, after briefly discussing the history and purpose of SLUSA, *see supra* I.A, the district court turned to the central question of "whether the plaintiff alleges the use of misrepresentations, omission, or deceptive devices 'in connection with the purchase or sale of a covered security.'" First, the district court concluded that the SIB CDs themselves were not "covered securities" within the meaning of SLUSA because SIB never registered the CDs, nor were they traded on a national exchange. *See* 15 U.S.C. § 77r(b). This finding, the district court stated "did not end the SLUSA inquiry."

Noting that the Supreme Court has urged a "'broad interpretation[]' of the 'in connection with' [requirement] . . . in order to further the PSLRA's goals," the district court stated that "the strength of the nexus between an allegedly fraudulent scheme and the securities transactions serves as the primary thread tying the caselaw together." Given the "melange" of other circuit courts' formulations of the test to determine what connection between a fraud and transactions in covered securities is required for SLUSA preclusion to apply and the "apparent absence of controlling Fifth Circuit authority," the district court decided to employ the Eleventh Circuit's approach from *Instituto de Prevision Militar v. Merrill Lynch* ("*IPM*"), 546 F.3d 1340 (11th Cir. 2008).

Applying the Eleventh Circuit's test, the district court found that the *Roland* Plaintiffs had alleged

two distinct factual bases connecting the fraud to transactions in covered securities. First, the district court found that "[t]he [*Roland*] Plaintiffs' purchases of SIB CDs were 'induced' by the misrepresentation that SIB invested in a portfolio including SLUSA-covered securities." It noted that the CDs' promotional material touted that the bank's portfolio of assets was invested in "highly marketable securities issued by stable governments, strong multinational companies and major international banks." The district court also found that the purported investment of the bank's portfolio in SLUSA-covered securities gave its CDs certain qualities that induced Plaintiffs' purchases. The instruments were labeled CDs "to create the impression . . . that the SIB CDs had the same degree of risk as certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve." However, they were advertised to function "[l]ike well-performing equities" by offering "liquidity combined with the potential for high investment returns." This was supposedly made possible by "the consistent, double-digit returns on the bank's investment portfolio," which stemmed, in part, from the presence of SLUSA-covered securities. The *Roland* Plaintiffs allege in their petition that had they "been aware of the truth" that SIB's "portfolio consisted primarily of illiquid investments or no investments at all," they "would not have purchased the SIB CDs." The district court therefore found that the *Roland* Plaintiffs sufficiently alleged that their "CD purchases were induced by a belief that the SIB CDs were backed in part by investments in SLUSA-covered securities."

Additionally, the district court found the *Roland* Plaintiffs' "allegations . . . reasonably imply that the Stanford scheme coincided with and depended upon the [*Roland*] Plaintiffs' sale of SLUSA-covered securities to finance SIB CD purchases." It noted that the *Roland* Plaintiffs claim that the fraud was a scheme targeting recent retirees who were urged to roll the funds in their retirement account into an IRA administered by SEI, of which the Trust was the custodian and which was fully invested in the CDs. The district court noted that "retirement funds come in a variety of forms that might not all involve SLUSA-covered securities," but that "stocks, bonds, mutual funds, and other SLUSA-covered securities commonly comprise IRA investment portfolios." From this, the court stated "that at least one of the [*Roland*] Plaintiffs acquired SIB CDs with the proceeds of selling SLUSA-covered securities in their IRA portfolios," and therefore, this "modest finding" independently supported the district court's ruling that the *Roland* Plaintiffs' claims were precluded by SLUSA. Accordingly, the district court denied the *Roland* Plaintiffs' motion for remand and dismissed the action pursuant to 15 U.S.C. § 78bb(f)(1)(A).

In a separate order, the district court considered the Willis Defendants' and the Proskauer Defendants' motions to dismiss. Stating "[b]ecause [the *Troice*] Plaintiffs bring class claims 'based upon the statutory or common law of Texas and 'alleging . . . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security,'" the discussion in the district court's order in *Roland v. Green* compels the finding

that SLUSA precludes the *Troice* Plaintiffs' action, and therefore it must be dismissed.

The *Roland* and *Troice* Plaintiffs timely appealed their dismissals, which this court consolidated for the purposes of oral argument and disposition.

II

The *Roland* case is before us from a denial of a motion to remand, and the *Troice* cases are before us on motions to dismiss. On each procedural posture, our review is the same—de novo. *Martin v. PepsiAmericas, Inc.*, 628 F.3d 738, 740 (5th Cir. 2010) (motion to dismiss); *In re 1999 Exxon Chem. Fire*, 558 F.3d 378, 384 (5th Cir. 2009) (motion to remand).

III

A

Though the question of the scope of the "in connection with" language under SLUSA is one of first impression in this circuit, we do not write on a blank slate. The Supreme Court directly addressed the issue of what constitutes "in connection with the purchase or sale of a covered security" in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*. In that case, a former broker joined with customers of Merrill Lynch in a class action against the firm for breaches of fiduciary duty and contract, alleging that Merrill Lynch had issued biased research and investment recommendations. *Dabit*, 547 U.S. at 75. These misrepresentations, according to Dabit's complaint, harmed the class members in two ways. First, as to the customers, the misrepresentations

allegedly "caused them to hold onto overvalued securities." *Id.* at 76. Second, as to the brokers, the misrepresentations allegedly caused them to "los[e] commission fees when their clients, now aware that they had made poor investments, took their business elsewhere." *Id.* The district court dismissed all of the claims based on SLUSA. *Id.* The Second Circuit affirmed as to the claims of buyers and sellers, but said SLUSA did not preclude the claims of "holders," those who had not purchased or sold a security but suffered merely by retaining or "holding" their existing shares in reliance on Merrill Lynch's allegedly fraudulent research. *Id.* at 77. The central question in *Dabit*, therefore, was whether the holders' claims were precluded given SLUSA's requirement that a fraud alleged be "in connection with the purchase or sale of a covered security." *Id.* at 84.

After discussing the purposes of Section 10(b) and the history of Rule 10b-5 litigation, the Court noted that the reason it had barred holders from asserting a private right of action under Rule 10b-5 in *Blue Chip Stamps v. Manor Drug Stores* was "policy considerations," including the special danger that "'vexatious[] . . . litigation'" posed in the realm of securities. *Dabit*, 547 U.S. at 80 (quoting *Blue Chip Stamps*, 421 U.S. 723, 739 (1975)). The same policy considerations that led to that limitation on Rule 10b-5's private right of action, *see supra* I.A, motivated Congress in its passage of the PSRLA and SLUSA. *Dabit*, 547 U.S. at 81–82. In using the "in connection with" language that had been the focus of so much litigation in the Rule 10b-5 context, the Court found that "Congress can hardly have been

unaware of the broad construction adopted by both this Court and the SEC." *Id.* at 85. It also found that by using the exact same language—"in connection with the purchase or sale of [covered] securities"—Congress intended to incorporate the judicial interpretations given to that phrase into SLUSA as well. *Id.* at 85–86.

Since Congress intended "in connection with" to mean the same thing in SLUSA as it does in Section 10(b), "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else. The requisite showing, in other words, is 'deception "in connection with the purchase or sale of any security," not deception of an identifiable purchaser or seller.'" *Id.* at 85 (quoting *United States v. O'Hagan*, 521 U.S. 642, 651, 658 (1997) (internal citation omitted)); *see also SEC v. Zandford*, 535 U.S. 813, 824 (2002) ("[T]he SEC complaint describes a fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide. Those breaches were therefore 'in connection with' securities sales within the meaning of § 10(b)."). From these principles, the Court held that SLUSA precludes state-law holder class actions like Dabit's. *Dabit*, 547 U.S. at 87.

B

Since *Dabit*, six of our sister circuit courts have tried to give dimension to the "coincide" requirement announced in *SEC v. Zandford* and brought into the SLUSA scheme in *Dabit*. *Romano v. Kazacos*, 609 F.3d 512 (2d Cir. 2010); *Segal v. Fifth Third Bank, N.A.*, 581 F.3d 305 (6th Cir. 2009); *Madden v. Cowen & Co.*, 576 F.3d 957(9th Cir. 2009); *Instituto de*

Prevision Militar v. Merrill Lynch, 546 F.3d 1340 (11th Cir. 2008); *Siepel v. Bank of Am., N.A.*, 526 F.3d 1122 (8th Cir. 2008); *Gavin v. AT&T Corp.*, 464 F.3d 634 (7th Cir. 2006). To be sure, we are only bound by decisions of the Supreme Court, which has stated that "in connection with" must be interpreted broadly, *Zandford*, 535 U.S. at 819. But the test it has offered—whether or not "the fraud alleged '*coincide*[*s*]' with a securities transaction," *Dabit*, 547 U.S. at 85 (emphasis added)—is not particularly descriptive. Moreover, when the Court first set forth the "coincide" requirement, it cautioned that "the statute must not be construed so broadly as to convert every common-law fraud that *happens to involve* [*covered*] *securities* into a violation of § 10(b)." *Zandford*, 535 U.S. at 820 (emphasis added). In light of this tension, consideration of how our sister circuits have construed and applied this "coincide" requirement is helpful in deciding how best to approach our present case. *Cf. United States v. Villegas*, 494 F.3d 513, 514 (5th Cir. 2007).

In our consideration, we find most persuasive the decisions from the Second, Ninth, and Eleventh Circuits. The cases from the other circuits do not attempt to define the "coincide" requirement, but merely discuss what connection above and beyond "coincide" is sufficient. For example, in *Segal*, the Sixth Circuit noted that fraud allegations that "depend on" transactions in covered securities meet the "coincide" requirement, but it does not state that for a fraud to "coincide" *requires* that the fraud "depend on" transactions in covered securities. It narrowly holds that where fraud depends on transactions in covered securities, the fraud will also

coincide with transactions in covered securities. *Segal*, 581 F.3d at 310; *see also Siepel*, 526 F.3d at 1127 (8th Cir.); *Gavin*, 464 F.3d at 639 (7th Cir.) (discussing how the "coincide" requirement requires plaintiffs to allege fraud "involving" covered securities but noting that a simple "but for" relationship between an alleged fraud and the purchase or sale of securities is insufficient).

The Second, Ninth, and Eleventh Circuits have, however, attempted to give dimension to what is sufficiently connected/coincidental to a transaction in covered securities to trigger SLUSA preclusion. The Eleventh Circuit in *Instituto de Prevision Militar v. Merrill Lynch* ("*IPM*") dealt with claims brought by a Guatemalan government agency that administered a pension fund for Guatemalan military veterans, which invested in Pension Fund of America ("PFA"), and other Latin American PFA investors against Merrill Lynch. 546 F.3d at 1342–43. According to their complaint, Merrill Lynch "actively promot[ed] PFA and vouch[ed] for the character of PFA's principals." *Id.* at 1343 (internal quotation marks omitted). After determining that the class met SLUSA's definition of a "covered class action," *see* 15 U.S.C. § 78bb(f)(5)(B), the Eleventh Circuit turned to the "coincide" requirement. *IPM*, 546 F.3d at 1345–48. It held that requirement met if either "fraud . . . induced [plaintiffs] to invest with [the defendant(s)]" or "a fraudulent scheme . . . coincided and depended upon the purchase or sale of [covered] securities." *Id.* at 1349. The court found that "IPM is complaining about fraud that induced it to invest with PFA, which means that its claims are

'in connection with the purchase or sale' of a security under SLUSA." *Id.*

The Ninth Circuit articulated its test for the "coincide" requirement slightly differently in its *Madden v. Cowen & Co.* opinion. That case involved shareholders of two medical care providers that were looking to merge with a larger company. 576 F.3d at 962. In attempting to merge these two medical care providers, the shareholders retained an investment bank, Cowen, "to look for prospective buyers, give advice regarding the structure of any potential sale, and render a fairness opinion regarding any proposed transaction." *Id.* (internal quotation marks omitted). Two suitors stepped up—one closely-held corporation and another publicly-traded company. *Id.* Cowen recommended to the shareholders that they accept the bid from the publicly-traded company. *Id.* After the merger was complete, the stock price of the publicly-traded company tumbled. *Id.* at 963. The shareholders then brought suit against Cowen for "negligent misrepresentation and professional negligence under California law." *Id.* Based on *Dabit*'s statement that "in connection with" must be interpreted the same way under SLUSA as it is under Section 10(b), the Ninth Circuit looked to its prior precedent and held fraud is "'in connection with' the purchase or sale of securities if there is 'a relationship in which the fraud and the stock sale coincide or are more than tangentially related.'" *Id.* at 966 (quoting *Falkowski v. Imation Corp.*, 309 F.3d 1123, 1131 (9th Cir. 2002)). Applying the "more than tangentially related" test, the court found that "the misrepresentations and omissions alleged in the complaint are more than tangentially related to [the

shareholders'] purchase of the [publicly-traded company's] securities." *Id.* (internal quotation marks omitted).

The most recent circuit to consider the scope of the "coincide" requirement post-*Dabit* was the Second Circuit in *Romano v. Kazacos*. *Romano* dealt with two consolidated cases—one brought by Xerox retirees and one by Kodak retirees—alleging that Morgan Stanley "misrepresented that if appellants were to retire early, their investment savings would be sufficient to support them through retirement." 609 F.3d at 515. Based on these alleged misrepresentations, the retirees "deposited their retirement savings into Morgan Stanley IRA accounts, where covered securities were purchased on their behalf." *Id.* at 520. In discussing the "coincide" requirement, the Second Circuit stated that "SLUSA's 'in connection with' standard is met where plaintiff's claims turn on injuries caused by acting on misleading investment advice—that is, where plaintiff's claims necessarily allege, necessarily involve, or rest on the purchase or sale of securities. . . . [Additionally,] the more exacting induced standard satisfies § 10(b)'s 'in connection with' requirement." *Id.* at 522 (citations and internal quotation marks omitted).

Each of the circuits that has tried to contextualize the "coincide" requirement has come up with a slightly different articulation of the requisite connection between the fraud alleged and the purchase or sale of securities (or representations about the purchase or sale of securities): *Segal*, 581 F.3d at 310 (6th Cir.) ("depend on"); *Siepel*, 526 F.3d at 1127 (8th Cir.) ("related to"); *Gavin*, 464 F.3d at

639 (7th Cir.) ("involving," meaning more than "but for"); *IPM*, 546 F.3d at 1349–50 (11th Cir.) ("induced by" or "depended upon"); *Madden*, 576 F.3d at 966 (9th Cir.) ("more than tangentially related to"); *Romano*, 609 F.3d at 522 (2d Cir.) ("necessarily allege, necessarily involve, or rest on"). Beyond these various interpretations, we also think it useful before our standard to consider cases more factually analogous to ours than *Dabit* and much of its progeny. That is, cases where the fraud alleged was centered around the purchase or sale of an uncovered security, like the CDs at issue in this appeal.

C

The preclusion analysis under SLUSA is slightly more complex in cases where the fraudulent scheme alleged involves a multi-layered transaction, like the one at issue in our case. In these cases, the plaintiffs often are fraudulently induced into investing in some kind of uncovered security, like a CD or a share in a "feeder fund," which has some relationship either through the financial product's management company or through the financial product itself to transactions (real or purported) in covered securities, such as stocks. Some of the more analogous cases arise out of the slew of recent suits stemming from the Bernie Madoff Ponzi scheme, especially the so-called "feeder fund" cases.[2] From our reading of

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[2] The basic facts surrounding Madoff's historic Ponzi scheme are now well known. Madoff was a prominent and respected member of the investing community .... Madoff's investment company, BMIS, had operated since

these uncovered securities cases, we glean three approaches: (1) focus the analysis on whether the financial product purchased was a covered security (the "product approach"); (2) focus on the "separation" between the investment in the financial product and the subsequent transactions (real or

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approximately 1960. Madoff, who was notoriously secretive, claimed he utilized a "split-strike conversion strategy" to produce consistently high rates of return on investment. The split-strike conversion strategy supposedly involved buying a basket of stocks listed on the Standard & Poor's 100 index and hedging through the use of options.

However, since at least the early nineties, Madoff did not actually engage in any trading activity. Instead, Madoff generated false paper account statements and trading records; if a client asked to withdraw her money, Madoff would pay her with funds invested by other clients. During this time, Madoff deceived countless investors and professionals, as well as his primary regulators, the Securities and Exchange Commission ("SEC") and the Financial Industry Regulatory Authority ("FINRA"). On December 11, 2008, news broke that Madoff had been operating a multi-billion dollar Ponzi scheme for nearly twenty years. Madoff pleaded guilty to securities fraud and related offenses on March 12, 2009, and was subsequently sentenced to 150 years in prison.

Many individuals and institutions that invested with Madoff did so through feeder funds . . . . Investors would invest in the feeder fund, which would then invest its assets with Madoff. . . . After Madoff's fraud became public, the [funds'] managing members [usually] decided to liquidate the [funds] and distribute [their] remaining assets. The fund[s'] liquidation forms the subject matter of [the lawsuits].

In re Beacon Assocs. Litig., 745 F. Supp. 2d 386, 393–94 (S.D.N.Y. 2010).

purported) in covered securities (the "separation approach"); and (3) focus on the "purpose(s)" of the investment (the "purposes approach").

1

Courts that take the product approach focus their analysis on the type of financial product upon which the alleged fraudulent scheme centers. In doing so, the crux of the analysis is not whether or not the "coincide" requirement of SLUSA is met, but rather whether the financial product qualifies as a "covered security" under 15 U.S.C. § 78bb(f)(5)(E). In *Ring v. AXA Financial, Inc.*, the Second Circuit held that claims of fraud relating to the sale of an interest in a term life insurance policy, a Children's Term Rider ("CTR") (a "classic insurance product" and an uncovered security) were not SLUSA-precluded merely because the insurance company held covered securities in its portfolio, which in turn backed the plaintiffs' interest in the CTR. 483 F.3d 95, 96, 99 (2d Cir. 2007). It likewise found the fact that the CTR was attached to a variable life insurance policy, which is a covered security under SLUSA, was insufficient to preclude all claims relating to the CTR because "the CTR and the policy to which it is appended must be considered separately." *Id.* at 96. *But see IPM*, 546 F.3d at 1351 ("[H]ybrid securities . . . are 'covered securities.'" (citing *Herndon v. Equitable Variable Life Ins. Co.*, 325 F.3d 1252 (11th Cir. 2003) (per curiam))). Similarly, in *Brehm v. Capital Growth Financial*, the district court held that "private placement securities or debentures" were not covered securities. No. 8:07CV315, 2008 WL 553238, at *2 (D. Neb. Feb. 25, 2008). Moreover, it found that allegations that the defendants were

also going to invest in "securities and other intangible instruments that are traded in the public markets or issued privately" were insufficient to bring the case within SLUSA's preclusive ambit. *Id.* at *3 (internal quotation marks omitted).

The most-cited case using this approach is *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC*, 750 F. Supp. 2d 450 (S.D.N.Y. 2010). That case was an "action to recover losses stemming from the liquidation of two British Virgin Islands based hedge funds . . . in which [the plaintiffs] held shares." *Id.* at 451. The *Montreal Pension* court held, "Because plaintiffs purchased shares in hedge funds, rather than covered securities, SLUSA does not preempt plaintiffs' state-law claims." *Id.* at 453–54. It went on to discuss *Dabit* and distinguished it by stating,

> The interpretation of SLUSA urged by the [Defendants] stretches the statute beyond its plain meaning. There are no grounds on which to justify applying *Dabit* to statements made by the [Defendants] concerning *uncovered hedge funds*—even when a portion of the assets in those funds include covered securities. This outcome is required because the alleged fraud relates to those hedge funds rather than to the covered securities in the portfolios.

Id. at 454–55. Lastly, using some language more characteristic of the purpose and separation approaches, the court also distinguished its case from the Madoff feeder fund cases where SLUSA preclusion was found. It noted that the feeder funds

in those cases were "nothing but ghost entities—easily pierced," and that those funds essentially "did not exist and had no assets. Thus," it found, the plaintiffs in those cases "could claim that they deposited their money [in the funds] for the purpose of purchasing covered securities." *Id.* at 455 n.27. None of those conditions were present in the funds purchased by the plaintiffs; therefore, it concluded, "covered securities are not 'at the heart' of this case." *Id.* at 455.

2

The separation approach considers the degree of separation between the fraud inducing the plaintiffs to buy the uncovered securities and the downstream transactions in covered securities. This focus is somewhat like *Montreal Pension*'s concern about what is at the "heart" of the case. The most cited case using the separation approach is *Anwar v. Fairfield Greenwich Ltd.* (*Anwar II*). *Anwar II* dealt with a feeder fund to invest in Madoff's funds. 728 F. Supp. 2d 372, 387 (S.D.N.Y. 2010). The district court in *Anwar II*, however, found distinct differences in how the funds at issue in that case operated and the usual way Madoff feeder funds operated. *Compare id.* at 398–99 *with supra* note 2. Finding that the funds at issue were "not . . . cursory, pass-through entit[ies]," *id.* at 398, the *Anwar II* court held that "[t]hough the [c]ourt must broadly construe SLUSA's 'in connection with' phrasing, stretching SLUSA to cover this chain of investment—from [p]laintiffs' initial investment in the [f]unds, the [f]unds' reinvestment with Madoff, Madoff's supposed purchases of covered securities, to Madoff's sale of those securities and purchases of Treasury bills—

snaps even the most flexible rubber band." *Id.* at 399. Therefore, the court found that the "coincide" requirement was not met because "[t]he allegations in [that] case present[ed] multiple layers of separation between whatever phantom securities Madoff purported to be purchasing and the financial interests [p]laintiffs actually purchased." *Id.* at 398; *cf. Levinson v. PSCC Servs., Inc.* (*Levinson II*), No. 3:09-CV-269, 2010 WL 5477250, at *8 (D. Conn. Dec. 29, 2010) ("A third party's fraud—although the intervening and primary cause of the plaintiff's losses—does not supplant the fraudulent conduct on the part of the defendant that is necessary to trigger SLUSA preemption."). *But see In re Herald, Primeo, & Thema Secs. Litig.*, No. 09 Civ. 289, 2011 WL 5928952, at *7 (S.D.N.Y. Nov. 29, 2011) ("[C]laims against these [d]efendants are integrally tied to the underlying fraud committed by Madoff.").

3

The third and most widely adopted approach is the purpose approach, which primarily concerns itself with what the purpose of the investment was. The clearest articulation of this approach asks whether the uncovered securities (feeder funds) "were created for the purpose of investing in [covered] securities." *Newman v Family Mgmt. Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010); *see also In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 430 (S.D.N.Y. 2010) ("[T]he objective of the fund was to manage [p]laintiffs' investment using a strategy that inevitably included the purchase and sale of covered securities."); *Levinson v. PSCC Servs., Inc.* (*Levinson I*), No. 3:09-CV-269, 2009 WL 5184363, at *7 (D. Conn. Dec. 23, 2009) ("[T]he omnibus account

created by [d]efendants was clearly for the purpose of allowing Madoff to purchase and sell securities using [p]laintiffs' funds.").

In ascertaining the purpose of the investment, these courts have considered what the fraud "at the heart of the case" was. *In re Kingate Mgmt., Ltd. Litig.*, No. 09 Civ. 5386, 2011 WL 1362106, at *9 (S.D.N.Y. Mar. 30, 2011); *see also Montreal Pension*, 750 F. Supp. 2d at 455; *Backus v. Conn. Cmty. Bank, N.A.*, No. 3:09-CV-1256, 2009 WL 5184360, at *5 (D. Conn. Dec. 23, 2009). They have also looked to the centrality of transactions in covered securities to the fraud. *See Barron v. Igolnikov*, No. 09 Civ. 4471, 2010 WL 882890, at *5 (S.D.N.Y. Mar. 10, 2010); *Backus*, 2009 WL 5184360, at *8. Finally, some courts have considered the "nature of the parties' relationship, and whether it necessarily involved the purchase or sale of securities." *Levinson I*, 2009 WL 5184363, at *11 (citing *Rowinski v. Salomon Smith Barney, Inc.*, 398 F.3d 294, 302 (3d Cir. 2005)); *see also Backus*, 2009 WL 5184360, at *8 ("[T]he very purpose of the relationship . . . was to trade in securities.").

D

Given the Supreme Court's express reliance on "policy considerations" in its determination of the scope of the "in connection with" language in Section 10(b), *Blue Chip Stamps*, 421 U.S. at 737, and SLUSA, *Dabit*, 547 U.S. at 81, we find it useful to consider such arguments in our formulation of the standard. Specifically, we find persuasive Congress's explicit concern about the distinction between

national, covered securities and other, uncovered securities.

As we have stated previously, "SLUSA advances 'the congressional preference for national standards for securities class action lawsuits involving *nationally* traded securities.'" *In re Enron*, 535 F.3d at 338 (quoting *Dabit*, 547 U.S. at 87) (emphasis added). The rationale for this preference is clear: Because

> companies can not control where their securities are traded after an initial public offering . . . , companies with publicly-traded securities can not choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its peculiar litigation system on all national issuers. The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities.

H.R. Rep. No. 105-803, at 15 (1998) (Conf. Rep.). Such concerns are unique to the world of national securities. That SLUSA would be applied only to transactions involving national securities appears to be Congress's intent: "[T]he securities governed by this bill—and it is important to emphasize this point—are by definition trading on national exchanges. As we all know, securities traded on national exchanges are bought and sold by investors in every State, and those investors rely on information distributed on a national basis." 144 Cong. Rec. 4799 (1998) (statement of Sen. Joseph

Lieberman); *see also* 144 Cong. Rec. 10780 (1998) (statement of Rep. Anna Eshoo) ("This legislation is limited in scope and only affects class action lawsuits involving nationally traded securities.").

Exempting non-national securities from SLUSA's preclusive scope does not render them unregulated. When enacting SLUSA, Congress recognized the importance of maintaining the vital role of state law in regulating non-national securities. Congress found "that in order to avoid . . . thwarting . . . the purpose of the [PSLRA], national standards for nationally traded securities must be enacted, while preserving the appropriate enforcement powers of state regulators, and the right of individuals to bring suit." S. Rep. 105-182, at 8 (1998). Notably, state common law breach of fiduciary duty actions provide an important remedy not available under federal law. *See* Securities & Exchange Commission, *Study on Investment Advisers and Broker-Dealers* (Jan. 2011), http://sec.gov/news/studies/2011/913studyfinal.pdf, at 54. In addition to fiduciary duty actions, over-extension of SLUSA also threatens state creditor-debtor regimes, which we have held are likely available to the Appellants. *See Janvey v. Adams*, 588 F.3d 831, 835 (5th Cir. 2009). The differences between the federal and state remedies have led our colleagues on the Eleventh Circuit to note that "[s]ince not every instance of financial unfairness or breach of fiduciary duty will constitute a fraudulent activity under § 10(b) or Rule 10b-5, federal courts should be wary of foreclosing common law breach of fiduciary duty actions which supplement existing federal or state statutes." *Gochnauer v. A.G.*

Edwards & Sons, Inc., 810 F.2d 1042, 1049 (11th Cir. 1987). This wariness is echoed by the members of Congress appearing as *amici* on behalf of the Appellants: "The interpretation of SLUSA and the 'in connection with' requirement adopted by the District Court . . . could potentially subsume any consumer claims involving the exchange of money or alleging fraud against a bank, without regard to the product that was being peddled." As they point out, every bank and almost every company owns some covered securities in its portfolio, and every debt instrument issued by these banks and companies is backed by this portfolio in the same way the CDs here were ultimately backed by the assets in SIB's portfolio. Precluding any group claim against any such debt issue merely because the issuer advertises that it owns these assets in its portfolio would be a major change in the scope of SLUSA.

IV

It is against this backdrop that we must go about formulating our standard for judging the connection of claims like the Appellants' to the purchase or sale of covered securities. As noted previously, there is tension in the law between following the Supreme Court's command that "in connection with" must be interpreted broadly, *Zandford*, 535 U.S. at 819, and its concurrent instruction that the same language "must not be construed so broadly as to convert every common-law fraud that happens to involve [covered] securities into a violation of § 10(b)," *id.* at 820.

The Eleventh Circuit's test from *IPM*, employed by the district court, is a good starting point because

it identifies the two different perspectives from which to approach the question of connectivity. *IPM* held that the "coincide" requirement is met if either "fraud . . . *induced* [plaintiffs] to invest with [the defendant(s)]" or "a fraudulent scheme . . . coincided and *depended upon* the purchase or sale of [covered] securities." *IPM*, 546 F.3d at 1349 (emphasis added). The "induced" prong examines the allegations from the plaintiffs' perspective by asking essentially whether the plaintiffs thought they were investing in covered securities or investing because of (representations about) transactions in covered securities. The "depended upon" prong views the allegations from the opposite perspective, the defendants', essentially asking whether the defendants' fraudulent scheme would have been successful without the (representations about) transactions in covered securities. These two perspectives—plaintiffs' and defendants'—are also seen in the various uncovered securities cases in the district courts. *Compare Levinson I*, 2009 WL 5184363, at *11 ("[T]he crux of [the p]laintiffs' allegations is that [the defendants'] fraudulent statements caused [the p]laintiffs to make poor investment decisions.") (plaintiffs' perspective) *with In re Beacon*, 745 F. Supp. 2d at 430 ("[T]he objective of the fund was to manage [p]laintiffs' investment using a strategy that inevitably included the purchase and sale of covered securities.") (defendants' perspective).

Viewing the allegations from the plaintiffs' perspective, however, asks the wrong question. By tying the "coincide" requirement to "inducement," it unnecessarily imports causation into a test whose

language ("coincide") specifically disclaims it. The defendant-oriented perspective, like *IPM*'s "depends upon" prong, is more faithful to the Court's statement that "[t]he requisite showing . . . is deception in connection with the purchase or sale of any security, *not deception of an identifiable purchaser or seller*." *Dabit*, 547 U.S. at 85 (emphasis added) (internal quotation marks omitted). *Dabit*'s formulation focuses the analysis on the relationship between the defendants' fraud and the covered securities transaction without regard to the fraud's effect on the plaintiffs. Additionally, *IPM*'s "depended upon" prong appears very similar to the Second Circuit's test from *Romano*, which found SLUSA preclusion is appropriate where "plaintiff's claims 'necessarily allege,' 'necessarily involve,' or 'rest on' the purchase or sale of securities." *Romano*, 609 F.3d at 522.

Though the defendant-oriented perspective is the proper point of view from which to consider the allegations, the problem we see with the test from that perspective as articulated by the Second and Eleventh Circuits is that it is too stringent a standard. Specifically, a reading of the opinions of the Sixth and Eighth Circuits on SLUSA preclusion suggests that those courts would find the "depended upon" standard to be too high a bar. The Sixth Circuit in *Segal* seemed to suggest that while a claim that "depended on" a securities transaction was sufficient, there were other connections that would also meet the "coincide" requirement. *Segal*, 581 F.3d at 310 ("Segal's allegations do not merely 'coincide' with securities transactions; they depend on them. Under these circumstances, the district

court properly concluded that SLUSA requires the dismissal of this complaint." (citations omitted)); *compare id. with IPM*, 546 F.3d at 1349 (The "coincide" requirement is met if "a fraudulent scheme . . . coincided and depended upon the purchase or sale of [covered] securities."). In *Siepel*, the Eighth Circuit found that the "coincide" requirement is less stringent than a standard requiring the fraud "relate to" transactions in covered securities. *Siepel*, 526 F.3d at 1127; *compare id. with Romano*, 609 F.3d at 522 (SLUSA preclusion is appropriate where "plaintiff's claims . . 'rest on' the purchase or sale of securities.").

In light of this, we find Ninth Circuit's test from *Madden*, which is that "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*," to be the best articulation of the "coincide" requirement. *Madden*, 576 F.3d at 965–66 (emphasis added and internal quotation marks omitted). This articulation nicely deals with the Court-expressed tension in *Zanford* that the requirement "must not be construed so broadly as to [encompass] every common-law fraud that happens to involve [covered] securities." *Zandford*, 535 U.S. at 820. It also heeds the Seventh Circuit's advice that "'the "connection" requirement must be taken seriously.'" *Gavin*, 464 F.3d at 640 (Posner, J.) (quoting *Frymire-Brinati v. KPMG Peat Marwick*, 2 F.3d 183, 189 (7th Cir. 1993) (Easterbrook, J.)). Lastly, it incorporates the significant policy and legislative intent considerations, all of which militate against an overbroad formulation. *See supra* III.D; *see also*

Dabit, 547 U.S. at 81. Therefore, we adopt the Ninth Circuit's test. Accordingly, if Appellants' allegations regarding the fraud are more than tangentially related to (real or purported) transactions in covered securities, then they are properly removable and also precluded. *See Kircher v. Putnam Funds Trust*, 547 U.S. 633, 644 (2006).

V

Having established the standard by which the Appellants' allegations will be judged, we turn now to the *Roland* and *Troice* complaints. "The plaintiff is 'the master of her complaint,' and, as such, a determination that a cause of action presents a federal question depends upon the allegations of the plaintiff's well-pleaded complaint." *Medina v. Ramsey Steel Co.*, 238 F.3d 674, 680 (5th Cir. 2001) (internal quotation marks omitted). The artful pleading doctrine is an independent corollary to the well-pleaded complaint rule: "[u]nder this principle, even though the plaintiff has artfully avoided any suggestion of a federal issue, removal is not defeated by the plaintiff's pleading skills in hiding [a] federal question." *Bernhard v. Whitney Nat'l Bank*, 523 F.3d 546, 551 (5th Cir. 2008). We have stated previously that the artful pleading doctrine "applies *only* where state law is subject to complete preemption." *Id.* (citing *Terrebone Homecare, Inc. v. SMA Health Plan, Inc.*, 271 F.3d 186, 188–89 (5th Cir. 2001). However, as the Second Circuit has noted, there is another situation where the artful pleading doctrine applies: "when Congress has . . . expressly provided for the removal of particular actions asserting state law claims in state court." *Romano*, 609 F.3d at 519

(citing *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003)).

> Application of the first prong is a bit tricky because SLUSA is a statute of preclusion, rather than preemption. But its effect is the same: where plaintiffs proceed as a class of fifty or more, state law securities claims are no longer available to them and federal law, which compels the dismissal of those claims, controls. Application of the second prong is straightforward. Since SLUSA expressly provides for the removal of covered class actions, it falls under the "removal" exception to the well-pleaded complaint rule. Consequently, we are free to look beyond the face of the amended complaints to determine whether they allege securities fraud in connection with the purchase or sale of covered securities.

Id. (citations and footnotes omitted); *see also Segal*, 581 F.3d at 310 ("Courts may look to—they must look to—the substance of a complaint's allegations in applying SLUSA. Otherwise, SLUSA enforcement would reduce to a formalistic search through the pages of the complaint for magic words . . . and nothing more."); *Rowinski*, 398 F.3d at 298 ("No matter how an action is pleaded, if it is a covered class action involving a covered security, removal is proper." (quotations and alterations omitted)).

Because of the need to examine the actualities of the alleged schemes, we find the product approach taken by some district courts, *see supra* III.C.1, which focuses its analysis on the type of financial

product upon which the alleged fraudulent scheme centers, to be too rigid. Our conclusion, in accord with the district court, that the CDs were uncovered securities therefore does not end our inquiry. We must instead closely examine the schemes and purposes of the frauds alleged by the Appellants.

A

With respect to the claims against the SEI Defendants and the Willis Defendants, we find the Appellants' allegations to be substantially similar such that they can be analyzed together.

1

The district court found that Appellants' claims were precluded because Appellants invested in the CDs, at least in part, because they were backed by "covered securities." To be sure, the CDs' promotional material touted that SIB's portfolio of assets was invested in "highly marketable securities issued by stable governments, strong multinational companies and major international banks." This is, however, but one of a host of (mis)representations[3]

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[3] As noted above, *see supra* I.B, the *Roland* Plaintiffs alleged that the SEI Defendants represented to them that the CDs were a good investment because (1) they could be "readily liquidated"; (2) SEI had evaluated SIB as being "competent and proficient"; (3) SIB "employed a sizeable team of skilled and experienced analysts to monitor and manage [its] portfolio"; (4) "independent" auditors "verified" the value of SIB's assets; (5) the SEI Defendants had "knowledge" about the companies that SIB invested in and that those companies were adequately capitalized; (6) the Antiguan government regularly "examined" SIB; (7) the CDs were a "safe investment vehicle suitable for long term investment with little or no risk"; (8) SIB had

made to the Appellants in an attempt to lure them into buying the worthless CDs. Viewing the allegations, as we must, from how the advisors at SEI and Willis allegedly structured their fraudulent scheme, we find the references to SIB's portfolio being backed by "covered securities" to be merely

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"retained legal counsel" that ensured that the investments were structured so as to comply with state and federal law; (9) the CDs would produce "consistent, double-digit returns"; and (10) SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." Similarly, the *Troice* Plaintiffs allege that the Willis Defendants represented to them that the CDs were a good investment because (1) SIB was based in the United States and "regulated by the U.S. Government"; (2) SIB was "insured by Lloyd's"; (3) SIB was "regulated by the Antiguan banking regulatory commission"; (4) SIB was "subjected to regular stringent risk management evaluations" conducted by "an outside audit firm"; (5) the CDs were safe and secure; (6) SIB's portfolio produced "consistent, double-digit returns"; (7) the CDs' "high return rates . . . greatly exceed those offered by commercial banks in the United States"; and (8) SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks."

tangentially related to the "heart,"[4] "crux,"[5] or "gravamen"[6] of the defendants' fraud.

When we look over the complaints against the SEI Defendants and the Willis Defendants, we find that the heart, crux, and gravamen of their allegedly fraudulent scheme was representing to the Appellants that the CDs were a "safe and secure" investment that was preferable to other investments for many reasons. For example, as alleged by the *Roland* Plaintiffs, the CDs were principally promoted as being preferable to other investments because of their liquidity, consistently high rates of return, and the fact that SEI and other regulators were keeping a watchful eye on SIB. Similarly, the so-called "safety and soundness letters" sent by the Willis Defendants focused on the "professionalism" of SIB and the "stringent" reviews. That the CDs were marketed with some vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities seems tangential to the schemes advanced by the SEI and Willis Defendants.

Our conclusion that the allegations do not amount to being "in connection with" transactions in

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[4] *In re Kingate Mgmt.*, 2011 WL 1362106, at *9 ("Madoff's fraud is at the heart of the case.").

[5] *Levinson I*, 2009 WL 5184363, at *11 ("[T]he crux of [the p]laintiffs' allegations is that [the defendants'] fraudulent statements caused [the p]laintiffs to make poor investment decisions.").

[6] *Backus*, 2009 WL 5184360, at *11 ("The gravamen of the Amended Complaint is a fraudulent scheme in connection with the purchase and sale of securities.").

covered securities is bolstered by the distinction between the present cases and the Madoff feeder fund cases. Comparing the allegations in the uncovered securities cases we surveyed, we find the most similarity with the allegations in the *Montreal Pension* case. The CDs, like the uncovered hedge funds in *Montreal Pension*, were not mere "ghost entities" or "cursory pass-through vehicles" to invest in covered securities. The CDs were debt assets that promised a fixed rate of return not tied to the success of any of SIB's purported investments in the "highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." Unlike in the Madoff feeder fund cases, "plaintiffs could [not] claim that they deposited their money in the bank for the purpose of purchasing covered securities." *Montreal Pension*, 750 F. Supp 2d at 455 n.27. Finally, as was the case in *Anwar II*, there are "multiple layers of separation" between the CDs and any security purchased by SIB. *Anwar II*, 728 F. Supp. 2d at 398.

Therefore, we find that the fraudulent schemes of the SEI Defendants and the Willis Defendants, as alleged by the Appellants, are not more than tangentially related to the purchase or sale of covered securities and are therefore not sufficiently connected to such purchases or sales to trigger SLUSA preclusion.

2

The district court also justified its decision based on the fact that "at least one of the [*Roland*] Plaintiffs acquired SIB CDs with the proceeds of

selling SLUSA-covered securities in their IRA portfolios" and that those transactions brought the action within the ambit of SLUSA preclusion. While we do not quarrel with the district court's finding that some plaintiffs sold covered securities to buy the CDs, we think that the way the district court approached this alleged connection was incorrect. The appropriate inquiry under SLUSA is whether the fraudulent scheme, as alleged by the Appellants, was connected with a transaction in a covered security. While the fact that covered securities were in fact traded as a part of the fraud is evidence of the defendants' intent, it is not dispositive.

Appellants argue that "[t]he source of funds used to buy uncovered securities is irrelevant." In response, the defendants posit that this cannot be the case in light of the Supreme Court's decisions in *Superintendent of Insurance v. Bankers Life & Casualty Co.* and *Zandford*. In *Bankers Life*, the Court dealt with a company president who allegedly conspired to acquire the company's stock using the company's assets and caused the company to liquidate its bond portfolio and to invest the proceeds in a worthless certificate of deposit. 404 U.S. 6, 8–9 (1971). The Court held that the scheme was "in connection with" the purchase or sale of securities such that suits by defrauded investors of the company could be maintained under Section 10(b). *Id.* at 12–13. In *Zandford*, the Court found that where a broker took over a customer's portfolio to purportedly manage and invest the assets but in fact, liquidated covered securities in order to steal the customer's funds, 535 U.S. at 815–16, the fraud was "in connection with" transactions in securities

because "[t]he securities sales and respondent's fraudulent practices were not independent events" and "each sale was made to further respondent's fraudulent scheme." *Id.* at 820.

Based on our reading of the allegations in the Appellants' complaints, the connection between the fraud and sales of covered securities is not met here. Unlike *Bankers Life* and *Zandford*, where the entirety of the fraud depended upon the tortfeasor convincing the victims of those fraudulent schemes to sell their covered securities in order for the fraud to be accomplished, the allegations here are not so tied with the sale of covered securities.[7] To be sure, it was necessary for fraud for the defendants to have the Appellants invest their assets into the CDs, but based on the allegations, there is no similar focus to *Bankers Life* and *Zandford* on the sale of covered securities. Therefore, we find that the fact that some of the plaintiffs sold some "covered securities" in order to put their money in the CDs was not more than tangentially related to the fraudulent scheme

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[7] Construing SLUSA to depend on the source of funds where the defendant does not care leads to absurd results. For example, if two putative class members buy adjacent parcels of fraudulently-marketed Texas ranch land (clearly not a covered security) and one pays for his land out of his checking account but the other pays for his by selling some nationally-traded stock, then the first's claim is not precluded by SLUSA but the second's is, even though their claims and actions are identical. Therefore, absent allegations about the defendant's focus on the source of the funds, the fact that a purchaser may have sold covered securities does not make the injury suffered "in connection with" the purchase or sale of covered securities.

and accordingly, provides no basis for SLUSA preclusion.

B

We view the claims against the Proskauer Defendants as different from those alleged against the other defendants. Unlike the claims against the SEI Defendants and the Willis Defendants, the *Troice* Plaintiffs' claims against the Proskauer Defendants are solely for aiding and abetting the Stanford Ponzi scheme. That is to say, the allegations against the SEI and Willis Defendants were, *inter alia*, that they made misrepresentations to the Appellants about the liquidity, soundness, and safety of investing in the CDs whereas the *Troice* Plaintiffs do not allege that the Proskauer Defendants made *any* misrepresentations to them. The core allegation is that without the aid of the Proskauer Defendants the Stanford Ponzi could not have been accomplished. However, when we examine the substance of the claims against the Proskauer Defendants, it is clear that there are misrepresentations involved.

Specifically, the Proskauer Defendants allegedly misrepresented to the SEC the Commission's ability to exercise its oversight over Stanford and SIB. By telling the SEC that it could not investigate the operations of Stanford and SIB, the Proskauer Defendants obstructed any chance of an SEC investigation uncovering the fraud, thereby allowing it to continue and harm the *Troice* Plaintiffs to occur. These alleged misrepresentations were one level removed from the misrepresentations made by SIB or the SEI and Willis Defendants. The connection

that the Proskauer Defendants would have us find is that the misrepresentations to the SEC about its regulatory authority allowed SIB to recruit the Willis Defendants to sell CDs, who in turn misrepresented to the *Troice* Plaintiffs a host of things in order to convince them that the CDs were good investments, including vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities. Like with the SEI and Willis Defendants, the misrepresentations made by the Proskauer Defendants are not more than tangentially related to the purchase or sale of covered securities and therefore, SLUSA preclusion does not apply.

VI

For the foregoing reasons, the judgments are REVERSED. The *Troice* cases are remanded to the district court, and the *Roland* case is remanded to the state court.

REVERSED.

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 11-10932

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and On Behalf Of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,

Plaintiffs-Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,

Defendants-Appellees

LEAH FARR; ET AL,

Plaintiffs-Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,

Defendants-Appellees

Consolidated with No. 11-11031

SAMUEL TROICE; HORACIO MENDEZ; ANNALISA MENDEZ; PUNGA PUNGA FINANCIAL, LIMITED, individually and on behalf of a class of all others similarly situated,

Plaintiffs-Appellants

v.

PROSKAUER ROSE, L.L.P.; THOMAS V. SJOBLOM; P. MAURICIO ALVARADO; CHADBOURNE AND PARKE, L.L.P.,

Defendants-Appellees

Consolidated with No. 11-11048

SAMUEL TROICE; MARTHA DIAZ; PAULA GILLY-FLORES; PUNGA PUNGA FINANCIAL, LIMITED, Individually and on behalf of a class of all others similarly situated; PROMOTORA VILLA MARINO, CA; DANIEL GOMEZ FERREIRO; MANUEL CANABAL,

Plaintiffs-Appellants

v.

WILLIS OF COLORADO INCORPORATED; WILLIS GROUP HOLDINGS LIMITED; AMY S. BARANOUCKY; ROBERT S. WINTER; BOWEN, MICLETTE & BRITT, INCORPORATED; WILLIS LIMITED,

Defendants-Appellees

Appeals from the United States District Court for the Northern District of Texas

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FILED: April 19, 2012

ON PETITION FOR REHEARING EN BANC

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:

Treating the Petitions for Rehearing En Banc as Petitions for Panel Rehearing, the Petitions for Panel Rehearing are DENIED.

No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P. and 5th Cir. R. 35), the Petitions for Rehearing En Banc DENIED.

ENTERED FOR THE COURT:

Edward C. Prado
United States Circuit Judge

P.S. Chief Judge Jones and Judges Smith and Haynes did not participate in the consideration of the rehearing en banc.

Appendix C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:10-CV-0224-N

JAMES ROLAND, *et al.*,

Plaintiffs,

v.

JASON GREEN, *et al.*,

Defendants.

FILED: August 31, 2011

ORDER

This Order addresses the Plaintiffs' motions to remand and motion for sanctions [4 & 28]. Because the Securities Litigation Uniform Standards Act of 1998 ("SLUSA")[1] expressly provides for the removal of actions similar to this case, the Court denies the motions. And, because the Plaintiffs bring claims "based upon the statutory or common law of" Louisiana and "alleging . . . a misrepresentation or

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[1] Pub. L. 105-353, 112 Stat. 3227. SLUSA substantively amended identically the Securities Act of 1933 and the Securities Exchange Act of 1934. *See* 15 U.S.C. §§ 77p(b) ('33 Act), 78bb(f) ('34 Act). For consistency, the Court refers only to the Securities Act provision.

omission of a material fact in connection with the purchase or sale of a covered security," 15 U.S.C. § 77p(b)(1), the Court dismisses this action with prejudice.

I. ORIGINS OF THE PLAINTIFFS' SECURITIES FRAUD ACTION

This action presents another episode related to the Securities and Exchange Commission's (the "SEC") ongoing securities fraud action against R. Allen Stanford, his associates, and various entities under Stanford's control (the "Stanford Defendants"). The Stanford Defendants allegedly swindled billions of dollars from investors through an elaborate and international Ponzi scheme. As part of that litigation, this Court "assume[d] exclusive jurisdiction and t[ook] possession of the" "Receivership Assets" and "Receivership Records" (collectively, the "Receivership Estate"). *See* Second Am. Order Appointing Receiver, July 19, 2010 [1130] (the "Receivership Order"), *in SEC v. Stanford Int'l Bank, Ltd.*, Civil Action No. 3:09-CV-0298-N (N.D. Tex. filed Feb. 17, 2009). Among other things, the Receivership Order enjoined litigation involving potential Receivership Estate assets.

In short, the Plaintiffs here invested in Stanford International Bank ("SIB") certificates of deposits ("CDs") on the advice of certain investment advisors (the "Investment Advisor Defendants")[2] and with the

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[2] The following Defendants are Investment Advisor Defendants: Jason Green, Grady Layfield, Hank Mills, Charles Jantzi, Tiffany Angelle, James Fontenot, Dirk Harris, Thomas

assistance of the Stanford Trust Company ("Stanford Trust") and its officers and directors (together with Stanford Trust, the "Trust Defendants").[3] Stanford Trust acted as custodian and trustee for the Plaintiffs' individual retirement accounts ("IRAs") and trusts. The Plaintiffs originally filed suit against the Defendants in Louisiana state court. Defendants Grady Layfield, Hank Mills, and John Schwab (the "Removing Defendants") removed to the Middle District of Louisiana, arguing that the Court's litigation injunction supplied federal question jurisdiction. Notice of Removal [1]. Defendant SEI Investments Company ("SEI") later separately consented to removal, simultaneously asserting that SLUSA provided an independent basis for removal because the SIB CDs should qualify as "covered securities" under SLUSA [5]. The MDL Panel subsequently transferred the action to this Court for consideration with other Stanford-related cases [36 & 37].

The Plaintiffs object to this Court's exercise of subject matter jurisdiction on several grounds. The Plaintiffs first move to remand in response to the Removing Defendants' Notice of Removal, contending primarily that the litigation stay fails to

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Newland, and Jay Comeaux. *See* Pls.' Original Pet. at 5–6 [1-3] [hereinafter "Petition"].

[3] The following Defendants are Trust Defendants: Stanford Trust, Zack Parrish, Bernard Young, Lena Stinson, Jay Comeaux, Rhonda Lear, Jack Bruno, J.D. Perry, Joe Klingen, Russ Newton, Danny Bogar, Jim Weller, and John Does 1-10. *See* Petition at 6–7.

provide a cognizable federal question justifying removal. The Plaintiffs' second motion to remand disputes both SEI's SLUSA-based removal arguments and whether SEI complied with certain removal requirements articulated in *Getty Oil. See Getty Oil Corp. v. Ins. Co. of N. Am.*, 841 F.2d 1254 (5th Cir. 1988). The Plaintiffs' second remand motion also seeks sanctions against SEI both for ignoring the alleged removal deficiencies and for presenting purportedly frivolous arguments. The Court first considers the Plaintiffs' procedural objections to removal before analyzing whether SLUSA mandates dismissal of the Plaintiffs' claims.

II. SEI'S INDEPENDENT BASIS FOR REMOVAL IS PROPERLY BEFORE THE COURT

The Plaintiffs argue that SEI essentially filed a second removal petition when it provided an independent basis for removal. According to the Plaintiffs, that means SEI was required to file its independent basis for removal within thirty days after the Removing Defendants filed their removal petition or the date when the first Defendant waived service of process. The Plaintiffs contend that those two dates are the same in this case, because the Removing Defendants waived service of process upon removal and that, therefore, SEI untimely filed its independent basis for removal. The Plaintiffs also assert that both attempts at removal fail because the Removing Defendants and SEI did not obtain the

consent of four Defendants who waived service of process prior to September 28, 2009.[4]

The Court disagrees. Stating an alternative justification for removal does not constitute filing a second removal petition. The Plaintiffs point to no caselaw to the contrary. And, to hold otherwise would have the nonsensical and judicially-inefficient result of mandating that all served defendants affirmatively assent to any defendant's theory of federal jurisdiction whenever proffered. Our jurisprudence requires served defendants to consent only once—at the time the removal petition is filed. 28 U.S.C. § 1446(a); *Getty Oil*, 841 F.2d at 1261 & n.9. To allow only first-to-remove defendants to present arguments for removal, moreover, would bind all other defendants to potentially faulty grounds for removal in cases that may otherwise be properly removable. Thus, the Court considers SEI's SLUSA-based justification for removal in addition to that provided by the Removing Defendants. The Court holds that it may retain jurisdiction if either theory is valid.

The Plaintiffs' consent-to-removal argument also fails. Only defendants served prior to removal need

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[4] The Plaintiffs do not explain why this date is significant, but it is twenty-nine days before October 27, 2009, the date the Plaintiffs filed their second remand motion. Thus, September 28th appears significant because the Plaintiffs could verify at that time that only four Defendants had not consented to removal within thirty days of waiving service. Several other Defendants filed waivers between September 29 and October 27. *See* Second Mot. to Remand Ex. B [28-5].

affirmatively consent to a properly filed petition. *See Getty Oil*, 841 F.2d at 1263 ("[S]ince all served defendants must join in the petition, and since the petition must be submitted within thirty days of service on the first defendant, all served defendants must join in the petition no later than thirty days from the day on which the first defendant was served."); *see also Jones v. Houston Indep. Sch. Dist.*, 979 F.2d 1004, 1007 (5th Cir. 1992) ("[Defendant's] failure to join in the removal petition is not a bar to the federal court's jurisdiction. [Defendant] could not have joined in it because, as [Plaintiff] acknowledges, [Defendant] was not even served until after the case had been removed."). The Plaintiffs admit that no Defendants had been served prior to the date the Removing Defendants filed their Notice of Removal. *See* Pls.' Second Mot. for Remand at 25 n.14. And, the Removing Defendants noted that fact in their removal petition. *See* Notice of Removal at 4. Accordingly, neither SEI nor any other Defendant was obligated to join the Removing Defendants' petition; SEI's later-filed formal consent to removal was superfluous for propriety-of-removal purposes.[5] And, in light of the Court's finding that SEI did not file a second notice of removal, the Removing Defendants' notice of removal was the only petition

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[5] In any case, defendants not served at the time of removal and who are dissatisfied with federal jurisdiction remain free to move for remand. *See* 28 U.S.C. § 1448 ("This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case."). No Defendants have apprised the Court of their disagreement with removal.

subject to consent-to-removal procedural requirements. The Court therefore finds that the Removing Defendants' removal was procedurally proper.

III. SLUSA "PREEMPTION" PROVIDES A FEDERAL QUESTION JUSTIFYING REMOVAL

SLUSA traces its history to the Private Securities Litigation Reform Act ("PSLRA"). Pub. L. 104-67, 109 Stat. 737 (codified as amended in scattered sections of 15 U.S.C.) (1995). Believing that the "class-action device was being used to injure the entire U.S. economy," Congress enacted the PSLRA to combat "perceived abuses of the class-action vehicle in litigation involving nationally traded securities." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 81 (2006) (citations and internal quotation marks omitted). Among other provisions, the PSLRA caps damage and attorneys' fee awards, creates a "'safe harbor' for forward-looking statements, impose[s] new restrictions on the selection of (and compensation awarded to) lead plaintiffs, mandate[s] [the] imposition of sanctions for frivolous litigation, . . . authorize[s] a stay of discovery pending resolution of any motion to dismiss," and "imposes heightened pleading requirements in actions brought pursuant to § 10b and Rule 10b-5." *Id.* at 81–82 (internal citations omitted). Congress hoped that the PSLRA would inhibit "nuisance filings, [the] targeting of deep-pocket defendants, vexatious discovery requests, and manipulation by class action lawyers of the clients whom they purportedly represent," which had "resulted in extortionate settlements, chilled any

discussion of issuers' future prospects, and deterred qualified individuals from serving on boards of directors." *Id.* at 81 (citations and internal quotation marks omitted).

The PSLRA worked as designed; the number of meritless federal securities fraud class actions decreased. "But the effort also had an unintended consequence: It prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether." *Id.* at 82. Although "state-court litigation of class actions involving nationally traded securities had previously been rare," securities fraud plaintiffs post-PSLRA increasingly turned to state-law causes of action brought in state courts. *Id.*

"To stem this shif[t] from Federal to State courts and prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of [the PSLRA], Congress enacted SLUSA." *Id.* (internal citations and quotation marks omitted) (first alteration in original); *see also In re Enron Corp. Sec., Derivative & ERISA Litig.*, 535 F.3d 325, 338 (5th Cir. 2008) (explaining that Congress enacted SLUSA to further the PSLRA's purposes). Although commonly viewed as a preemption statute, SLUSA more properly precludes certain actions. *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 637 n.1 (2006) ("The preclusion provision is often called a preemption provision; the Act, however, does not itself displace state law with federal law but makes some state-law claims nonactionable through the class-action device in federal as well as state court."). SLUSA provides in relevant part:

> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging –
>
> (1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or
>
> (2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 77p(b).

A. SLUSA Expressly Authorizes Removal

SLUSA expressly provides for removal of actions potentially violative of its class action limitations. *See* 15 U.S.C. § 77p(c) ("Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b)."). And, a plethora of caselaw supports SLUSA removal. *See, e.g.*, *Kircher*, 547 U.S. at 644 ("[A] motion to remand claiming the action is not precluded [by SLUSA] must be seen as posing a jurisdictional issue."); *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1219–23 (9th Cir. 2009) ("[SLUSA's] separate provision for a preclusion defense requiring the dismissal of covered class actions creates a federal question hook on which removal can hang.") (citations omitted). Accordingly, the Court may retain jurisdiction

provided that this action runs afoul of SLUSA's class action limitations.

B. The Court May Look Beyond the Pleadings to Determine Whether SLUSA Applies

The Plaintiffs nonetheless argue under the well-pleaded complaint rule that their decision to bring state-law claims in a state-court forum deserves deference. But, in the SLUSA context, the Plaintiffs are not the "masters of their complaint" able to plead around federal jurisdiction. *See, e.g.*, *Romano v. Kazacos*, 609 F.3d 512, 518–20 & n.2 (2d Cir. 2010) (holding that plaintiffs may not skirt SLUSA by failing to plead "federal claims in state proceedings"). "[T]here exists a corollary to the well-pleaded complaint rule—the 'artful pleading' rule—pursuant to which [a] plaintiff cannot avoid removal by declining to plead 'necessary federal questions.'" *Id.* at 518–19 (quoting *Rivet v. Regions Bank*, 522 U.S. 470, 475 (1998)). The artful pleading rule applies when, as here, a federal statute contains an express removal provision or preempts state law. *Id.* at 519. Under the artful pleading rule, "courts look beyond the face of an 'artfully pled' complaint to determine whether [a] plaintiff has 'cloth[ed] a federal law claim in state garb' by pleading state law claims that actually arise under federal law." *Id.* (quoting *Travelers Indem. Co. v. Sarkisian*, 794 F.2d 754, 758 (2d Cir. 1986)) (latter alteration in original). Accordingly, in conducting its preclusion analysis, the Court is not constrained to take the Plaintiffs' allegations at face value. *Cf. id.* at 519–20 ("'Courts may look to—they must look to—the substance of a complaint's allegations in applying SLUSA. Otherwise, SLUSA enforcement would reduce to a

formalistic search through the pages of the complaint for magic words . . . and nothing more.'" (quoting *Segal v. Fifth Third Bank*, 581 F.3d 305, 310 (6th Cir. 2009))) (omission in original); *see also Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294, 301 (3d Cir. 2005) (courts "scrutinize[] the pleadings to arrive at the 'essence' of a state law claim, in order to prevent artful drafting from circumventing SLUSA preemption") (collecting cases). Additionally, because SLUSA preclusion necessarily challenges subject matter jurisdiction, the Court may "make factual findings which are decisive of its jurisdiction." *Clark v. Tarrant County*, 798 F.2d 736, 741 (5th Cir. 1986) ("Courts may dismiss for lack of subject matter jurisdiction on any one of three different bases: (1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." (citing *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981))). The Court now turns to consider SLUSA's preclusive effect in this case.

IV. SLUSA PRECLUDES THE PLAINTIFFS' ACTION

SLUSA precludes an action when "four conditions are satisfied: (1) the action is a 'covered class action;' (2) the claims are based on state law; (3) the action involves one or more 'covered securities;' and (4) the claims allege a misrepresentation or omission of material fact 'in connection with the purchase or sale' of the security." *Enron*, at 338–39 (citing *Miller v. Nationwide Life Ins. Co.*, 391 F.3d 698, 701 (5th Cir. 2004); *Herndon v. Equitable Variable Life Ins. Co.*,

325 F.3d 1252, 1253 (11th Cir. 2003)).[6] The Court addresses these factors below. Because this action plainly meets SLUSA's covered class action definition and brings only state-law claims, the Court begins by analyzing the two elements of SLUSA preclusion most at issue in this case.

A. The Plaintiffs Allege Misrepresentations or Omissions of Material Facts

Because the "issue of [SLUSA] preemption . . . hinges on the content of the allegation—not on the label affixed to the cause of action," *Miller*, 391 F.3d at 702, the Plaintiffs' claims all concern "untrue statement[s] or omission[s] of a material fact."[7] 15

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[6] Courts have phrased variously the four conditions. The Second Circuit, for example, examines whether a suit "(1) is a 'covered' class action (2) based on state statutory or common law that (3) alleges that defendants made a 'misrepresentation or omission of a material fact' or 'used or employed any manipulative device or contrivance in connection with the purchase or sale' (4) of a covered security." *Romano*, 609 F.3d at 518. Since *Herndon*, the Eleventh Circuit has restated the final two prongs almost identically to *Romano*. *See Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1345 (11th Cir. 2008). The Ninth Circuit uses a five-factor analysis that inquires whether "(1) the class action . . is a 'covered' class action, and that it alleges (2) state and common law claims and (3) a misrepresentation or omission of material fact. . . (4) . . 'in connection with' the purchase or sale of a security under [SLUSA], and (5) . . involv[ing] 'covered securities.'" *U.S. Mortg., Inc. v. Saxton*, 494 F.3d 833, 843–44 (9th Cir. 2007). The different wordings do not appear materially to affect courts' substantive preclusion analyses.

[7] *Cf. LaSala v. Bordier et Cie*, 519 F.3d 121, 141 (3d Cir. 2008) (holding that this principle extends to breach of contract and other claims that technically lack a misrepresentation or

U.S.C. § 77p(b)(1). In paragraphs incorporated into all of their thirteen claims, the Plaintiffs allege certain "material representations" made by the Investment Advisor Defendants. Petition at 10. According to the Plaintiffs, those "representations were inaccurate or false." *Id.* at 11. The Trust Defendants also, among other things, allegedly failed to "inform the IRA and Trust Accounts holders of the" risks associated with SIB CDs, *id.* at 26, and misrepresented the Plaintiffs' IRA and trust account values. *Id.* at 28. SEI, for its part, allegedly aided and abetted the scheme "by joining the SG and Trust sales force to market[,] promote[,] and advertise SIB to prospective clients in order to assist and enable SG and the Trust to continue to sell SIB CD's based on the misrepresentations that they were fully insured." *Id.* at 32.

Finally, the Plaintiffs also have sued Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000, & 1183, XYZ Insurance Company, ABC Bond Company, and the RST Insurance Companies (collectively, the "Insurer Defendants"). The Plaintiffs assert that the Insurer Defendants' coverage obligations include the alleged misrepresentations and omissions; thus those claims also satisfy SLUSA's misrepresentation or omission element. *Id.* at 45. Accordingly, this action satisfies SLUSA's misrepresentation or omission element. *Cf.*

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omission element because "when one of a plaintiff's necessary facts is a misrepresentation, the plaintiff cannot avoid SLUSA by merely altering the legal theory that makes that misrepresentation actionable").

Miller, 391 F.3d at 702 (holding that SLUSA precluded breach of contract claim and "was designed to ensure that *all* causes of action involving allegations of misrepresentation or omission in connection with covered securities would be subject to the requirements of the [PSLRA]") (emphasis added) (citations omitted); *Segal*, 581 F.3d at 311 ("[SLUSA] does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentations in connection with buying or selling securities. It asks whether the complaint includes these types of allegations, pure and simple.").

B. The Defendants Allegedly Made Misrepresentations and Omissions "in Connection with" the Sale of "Covered Securities"

The final requirement for SLUSA preclusion is whether the plaintiff alleges the use of misrepresentations, omissions, or deceptive devices "in connection with the purchase or sale of a covered security." 15 U.S.C. § 77p(b)(1) & (b)(2). Courts have come to varying conclusions on what "in connection with" requires. *See, e.g.*, *Romano*, 609 F.3d at 521–22 n.5 (collecting different "in connection with" standards from the Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits). But, the caselaw makes clear that direct transactions in "covered securities," such as a plaintiff's purchase of stock on the New York Stock Exchange, most readily present opportunities for SLUSA preclusion. SEI characterizes this case as falling within that category. The Court disagrees.

1. The SIB CDs Are Not SLUSA-Covered Securities, But that Is Not the End of the Story. — SLUSA limits covered securities for its purposes to a subset of those under the Securities and Exchange Acts generally. *See* 15 U.S.C. § 77p(f)(3). For a security to qualify as a covered security under SLUSA, it must be "traded nationally and listed on a regulated national exchange." *Dabit*, 547 U.S. at 83; *see also* 15 U.S.C. § 77r(b)(1). Alternatively, SLUSA also considers any security "issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.]" to be a covered security. 15 U.S.C. § 77r(b)(2) (alteration in original).

The SIB CDs do not fall under either category. The Court has some sympathy with SEI's argument that SIB and certain of the Stanford entities should have registered under the Investment Company Act and that, therefore, the SIB CDs should have been covered securities under SLUSA. As SEI notes, a contrary conclusion risks encouraging companies' artful dodging of federal securities laws. But, SLUSA's plain language will not accommodate SEI's interpretation. SIB failed to register under the Investment Company Act, and the SIB CDs themselves were never traded on a national exchange. The Court therefore holds that the SIB CDs are not covered securities under SLUSA.

That, however, does not end the SLUSA inquiry. The Supreme Court has "rejected [the] view" that "an alleged fraud is 'in connection with' a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular

securities." *Dabit*, 547 U.S. at 85. In line with the Supreme Court's "broad interpretation[s]" of the "in connection with" phrase in section 10(b) and Rule 10b-5 caselaw and in order to further the PSLRA's goals, the *Dabit* Court held that the "in connection with" requirement is met if "the fraud alleged 'coincide[s]' with a securities transaction—whether by the plaintiff or someone else." *Id.* (citing, *inter alia*, *SEC v. Zandford*, 535 U.S. 813, 820, 822 (2002); *United States v. O'Hagan*, 521 U.S. 642, 651 (1997)). "The requisite showing, in other words, is 'deception in connection with the purchase or sale of any security,' not deception of an identifiable purchaser or seller." *Id.* (quoting *O'Hagan*, 521 U.S. at 658). Significantly here, several courts have held that section 10b, Rule 10b-5, and SLUSA do not require actual dealing in ascertainable securities. *See, e.g.*, *Zandford*, 535 U.S. at 819 (noting that the Securities Exchange Act "should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes," and encompasses "accept[ing] payments for securities that [a broker] never intends to deliver") (citations and internal quotation marks omitted);[8] *Grippo v. Perazzo*, 357 F.3d 1218, 1223

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[8] *Zandford* notably reversed the Fourth Circuit's more restricted holding that the "in connection with" requirement was not met because the "securities [transactions] were merely incidental to a fraud that lay in absconding with the proceeds of sales that were conducted in a routine and customary fashion" as part of a "scheme [whose purpose] was simply to steal . . . assets rather to engage in manipulation of a particular security." 535 U.S. at 817–18 (citations and internal quotation marks omitted).

(11th Cir. 2004) (holding that "in connection with" requirement was met in securities fraud case where "no proof exist[ed] that a security was actually bought or sold"); *Scala v. Citicorp Inc.*, 2011 WL 900297, at *4 (N.D. Cal. 2011) ("If a covered class action brought under state law concerns a transaction involving covered securities at all, it is subject to dismissal under SLUSA—even if it also involves non-covered securities or non-securities.") (footnote and citations omitted).[9]

This "dramatically simplified" and expansive interpretation of SLUSA's preclusive reach militates in favor of holding that the Defendants' misrepresentations and omissions were made in connection with transactions in covered securities. *U.S. Mortg., Inc. v. Saxton*, 494 F.3d 833, 844 (9th Cir. 2007). Courts have considered various factors in their "in connection with" analyses, but the strength of the nexus between an allegedly fraudulent scheme and securities transactions serves as the primary thread tying the caselaw together. *See, e.g.*, *Rowinski*, 398 F.3d at 302 & n.7 (providing four nonexclusive "guideposts in a flexible preemption inquiry," of which the first consideration is "whether the covered class action alleges a 'fraudulent scheme' that 'coincides' with the purchase or sale of

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[9] *See also Horattas v. Citigroup Fin. Markets Inc.*, 532 F. Supp. 2d 891, 901–903 (W.D. Mich. 2007) (holding that, post-*Dabit*, SLUSA precludes claims even if plaintiffs "did not buy or sell any securities and were not deceived about the value of any securities bought or sold").

securities" (citing *Zandford*, 535 U.S. at 825)).[10] The Circuits have used different variations of "coincide" in that analysis, including a "more exacting 'induced' standard." *Romano*, 609 F.3d at 522 & n.5.

Given this melange of opinions and in the apparent absence of controlling Fifth Circuit authority on the subject, the Court will follow the Eleventh Circuit's approach, which asks whether a group of plaintiffs premises their claims on either "fraud that induced [the plaintiffs] to invest with [the defendants] . . . or a fraudulent scheme that coincided and depended upon the purchase or sale of securities . . . ." *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008). The Plaintiffs seek to establish the Defendants' liability for misrepresentations and omissions "in

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[10] The other three *Rowinski* factors look to "whether the complaint alleges a material misrepresentation or omission disseminated to the public in a medium upon which a reasonable investor would rely . . . ; . . . whether the nature of the parties' relationship is such that it necessarily involves the purchase or sale of securities . . . ; and . . whether the prayer for relief connects the state law claims to the purchase or sale of securities." 398 F.3d at 302 (internal citations and quotation marks omitted). This case meets those factors. The Plaintiffs allege the existence of a SIB CD "marketing plan" that purportedly adhered to relevant federal and state consumer/investor protection laws. Petition at 8, 11. The investor-investment advisor relationship inherently concerns trading in securities. *See Rowinski*, 398 F.3d at 302 (discussing investor-broker context (quoting *Angelastro v. Prudential-Bache Sec., Inc.*, 764 F.2d 939, 944 (3d Cir. 1985))). And, as detailed below, the Plaintiffs' sought-after damages stem from transactions involving covered securities.

connection with" transactions in SLUSA-covered securities under both theories.

2. The Plaintiffs' Purchases of SIB CDs were "Induced" by the Misrepresentation that SIB Invested in a Portfolio Including SLUSA-Covered Securities. — Among other alleged misrepresentations, the Plaintiffs assert that the Investment Advisor Defendants touted that "SIB's multi-billion dollar investment portfolio of assets employed a sizeable team of skilled and experienced analysts to monitor and manage the portfolio." Petition at 10. The Investment Advisor Defendants also allegedly represented that SIB invested its assets in secure, adequately-capitalized, and properly-leveraged companies and funds. *Id.* at 11. Crucially, those investments allegedly were in "'highly marketable securities issued by stable governments, strong multinational companies and major international banks.'" *Id.* at 13. Although the Plaintiffs' petition does not list the "highly marketable securities," the Court finds that SIB led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities.[11]

As evidenced by the Plaintiffs' other allegations, that belief induced the Plaintiffs to purchase SIB CDs. The SIB CDs' allure stemmed in large part from their value as a debt-instrument substitute for equity investments. The SIB CDs "were called 'certificates of deposit' in order to create a perception

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[11] This inference seems modest given the prevalence of multinational companies on national stock exchanges and the tendency for governments to issue marketable bonds.

of security and limited degree of risk for the Plaintiffs and to create the impression and inference that the SIB CDs had the same degree of risk as certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve Board." *Id.* at 11. Like well-performing equities, however, the SIB CDs also offered liquidity combined with the potential for high investment returns. Those returns ostensibly were produced by "the consistent, double-digit returns on the bank's investment portfolio." *Id.* SIB claimed to have invested its portfolio at least in part in SLUSA-covered securities; that claim helped explain the CDs' purported low-risk/high-yield nature and, in the Plaintiffs' minds, set them apart from analogous but "highly speculative debt instruments similar to junk bonds." *Id.* at 13.

But, SIB did not invest as advertised. "Instead, [its] portfolio consisted primarily of illiquid investments or no investments at all." *Id.* at 16. And, "[i]f Plaintiffs had been aware of the truth, Plaintiffs would not have purchased the SIB CDs." *Id.* at 15. Accordingly, the Court reads the Plaintiffs' Petition to allege that the Plaintiffs' CD purchases were induced by a belief that the SIB CDs were backed in part by investments in SLUSA-covered securities.[12]

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[12] In this respect, this action resembles the Madoff Ponzi scheme "feeder fund" cases that also applied SLUSA preclusion. *See In re Kingate Mgmt. Ltd. Litig.*, 2011 WL 1362106, at *7 (S.D.N.Y. 2011) (noting that "[t]he majority of district courts within the Second Circuit have found, under similar [Madoff-related] facts, that claims like the ones brought here are 'in connection with covered securities'") (collecting cases). The Court sees no substantive difference between the

3. The Plaintiffs Allege a Fraudulent Scheme that Coincided with and Depended on the Sale of SLUSA-Covered Securities. — The Plaintiffs' allegations also reasonably imply that the Stanford scheme coincided with and depended on the Plaintiffs' sale of SLUSA-covered securities to finance SIB CD purchases. To begin with, the Plaintiffs clearly plead the existence of a fraudulent scheme. The Plaintiffs assert that the Investment Advisor Defendants initially solicited community leaders to purchase SIB CDs. "These early investors

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misrepresentations and omissions here; "fraud is at the heart" of the Plaintiffs' claims. *Id.* at *8. This observation does not "stretch[] SLUSA to cover [a] chain of investment . . . [that] snaps even the most flexible rubber band." *Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 399 (S.D.N.Y. 2010). Both Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit. Stanford took the incremental and conceptually immaterial additional step of promising that his investors' returns would come in the form of CD proceeds rather than directly from covered securities. Those returns, however, ostensibly were produced by and directly attributable to Stanford's investing in a portfolio that a reasonable investor would conclude contained SLUSA-covered securities.

The Madoff cases that have declined to apply SLUSA preclusion are distinguishable and represent a minority approach. *See In re Kingate*, 2011 WL 1362106, at *8–9 (noting that *Anwar* "is the sole case in which a court within the Southern District found that SLUSA did not preempt fraud claims related to a Madoff feeder fund" and distinguishing another case because "the alleged fraud in [that] case . . . related to the hedge funds themselves rather than to any covered securities in the funds' investment portfolios" (citing *Pension Comm. of the Montreal Univ. Pension Plan v. Banc of America Sec., LLC*, 750 F. Supp. 2d 450 (S.D.N.Y. 2010))).

received high returns to establish the legitimacy of the SIB CDs. The Investment Advisor Defendants then used the fact that known business leaders earned the promised return as a means to attract other investors." *Id.* at 14. So long as an ever-expanding pool of new investors purchased SIB CDs, SIB successfully maintained the outward appearance of "'operat[ing]' as a going concern." *Id.* at 15. But, in reality, SIB's revenue consisted almost exclusively of the "cash flow from SIB CD[] sales." *Id.* The Plaintiffs thus plead a classic Ponzi scheme. *See Janvey v. Alguire*, 2011 WL 2937949, at *9 (5th Cir. 2011) ("A Ponzi scheme is a fraudulent investment scheme in which money contributed by later investors generates artificially high dividends or returns for the original investors, whose example attracts even larger investments. . . . [A]s new investments [come] in, some of the new money [is] used to pay earlier investors.") (some alterations in original; internal quotation marks and citations omitted); Petition at 9 (characterizing Stanford Defendants' operation as a Ponzi scheme). Because the Plaintiffs' purchase of SIB CDs helped fuel and perpetuate the Stanford scheme, the Plaintiffs' allegations satisfy the coincided-with and depended-upon elements.

The Plaintiffs also almost certainly sold SLUSA-covered securities to purchase SIB CDs. As pled, the Plaintiffs generally encountered the Stanford scheme in a specific manner: "When a person would retire from a company, Stanford Trust and [the] Investment Advisor Defendants would actively seek the funds from the retirement funds of the former employees and would attempt to have these funds

rolled over into IRA's of which either Pershing or the Trust was the custodian." Petition at 24. Although retirement funds come in a variety of forms that might not all involve SLUSA-covered securities, many of the Plaintiffs' retirement accounts consisted of IRAs. And, stocks, bonds, mutual funds,[13] and other SLUSA-covered securities commonly comprise IRA investment portfolios. The Plaintiffs "rolled their IRA[s] into the Stanford Trust Company" and subsequently purchased SIB CDs. *Id.* at 8–9.

The investment process described by the Plaintiffs resembles that described in the SEC's investigation. "During the [SEC's] examination [of SGC], SGC provided a sample of 52 client files wherein SGC's clients liquidated securities to purchase CDs. The documents reflected that from August 2008 through December 2008, approximately $10.7 million in securities were liquidated to purchase SIB CDs." *See* TRO App. at 593 [13] (Yoder Decl.), *in SEC v. Stanford Int'l Bank, Ltd.*, Civil Action No. 3:09-CV-0298.[14] The Court therefore finds that at least one of the Plaintiffs acquired SIB CDs with the proceeds of selling SLUSA-covered securities in their IRA portfolios. Once those

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[13] Mutual funds are SLUSA-covered securities. *See, e.g., Segal,* 581 F.3d 305. Indeed, if a SLUSA-covered security constitutes any part of a security, that security qualifies as a covered security under SLUSA. *See, e.g., Instituto,* 546 F.3d at 1351.

[14] By Order dated July 22, 2011, the Court advised the parties of its intent to take judicial notice of the Yoder Declaration [65]. *See* FED. R. EVID. 201. The Court received no objections or responses to its notice.

transactions were complete, the Plaintiffs' erstwhile retirement funds were then funneled into and furthered the Stanford scheme.[15]

This modest finding effectively extends SLUSA preclusion to all Plaintiffs' claims. Because the Plaintiffs have submitted no evidence of their specific IRA holdings, the Court cannot determine whether any specific Plaintiff's account held SLUSA-covered securities. But, SLUSA preclusion applies even if only a single plaintiff sold a single SLUSA-covered security as part of his acquisition of SIB CDs. The Court reasonably draws that inference on the pleadings and evidentiary record before it. It may be that some Plaintiffs' accounts held securities entirely outside SLUSA's purview. By joining this action, however, they rendered their claims subject to SLUSA preclusion to the same extent as those brought by any Plaintiffs who liquidated SLUSA-covered securities. *See Rowinski*, 398 F.3d at 305 (holding that SLUSA's plain language "does not preempt particular 'claims' or 'counts' but rather preempts 'actions,' suggesting that if any claims alleged in a covered class action are preempted, the entire action must be dismissed") (internal citation

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[15] The transactions need not have been instantaneous. *See, e.g.*, *Romano*, 609 F.3d at 524 (noting that "*Dabit* . . . does not pivot on temporal limitations" and "declin[ing] to find that the passage of eighteen months between the alleged fraud and the purchase or sale of securities necessarily defeat[ed] SLUSA's 'in connection with' requirement" because that case, as here, concerned "'a string of events that were all intertwined'" (quoting *SEC v. Pirate Investor LLC*, 580 F.3d 233, 245 (4th Cir. 2009))).

omitted); *Segal*, 581 F.3d at 311 (holding that SLUSA's plain language and the *Dabit* Court's expansive interpretation of SLUSA's preclusive reach gives courts "no license to draw a line between SLUSA-covered claims that must be dismissed and SLUSA-covered claims that must not be"); *see also Instituto*, 546 F.3d at 1350 ("[E]ven if SLUSA requires a court to assess preclusion claim-by-claim, [it] does not require district courts to act like a prospector panning for a few non-precluded theories amid a river of precluded ones."). Accordingly, this action also satisfies the "in connection with" element because the Plaintiffs allege that the Stanford Ponzi scheme coincided with and depended upon the sale of SLUSA-covered securities.[16]

C. This Action Is a "Covered Class Action"

Both an individual suit and a group of related suits may qualify as a "covered class action" under SLUSA. 15 U.S.C. § 77p(f)(2). Because this case presently has been consolidated with *Farr v. Green*,[17] the Court looks to the group provisions.[18] Under

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[16] The record would support a determination that many Plaintiffs sold many SLUSA-covered securities to buy SIB CDs, but in view of the analysis here, the Court need reach no further than its finding that at least one Plaintiff did so.

[17] Civil Action No. 3:10-CV-0225-N (N.D. Tex. transferred by MDL Panel Feb. 5, 2010). *See* Order of May 12, 2011 (consolidating cases) [54]. No parties objected to consolidation. Indeed, the Plaintiffs filed no response to SEI's pre-MDL motion for consolidation [7].

[18] While courts typically consider the propriety of removal as of the time of removal, the SLUSA group provisions are an exception to that rule. *See Enron*, 535 F.3d at 340–41 (rejecting

SLUSA, "[a] group of lawsuits . . . constitutes a 'covered class action' if: (1) the suits are 'pending in the same court;' (2) the suits involve 'common questions of law or fact;' (3) 'damages are sought on behalf of more than 50 persons;' and (4) 'the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.'" *Enron*, 535 F.3d at 339 (quoting 15 U.S.C. § 78bb(f)(5)(B)(ii)).

This action constitutes a "covered class action" under SLUSA's group provision. After transfer from the MDL Panel, *Roland* and *Farr* both were pending before the Court. Both actions raised largely duplicative questions of law and fact. Together, they sought relief for over fifty plaintiffs. And, the Court previously consolidated this action with *Farr*. The cases therefore are now proceeding as a single action. Accordingly, this action satisfies SLUSA's covered-class-action element.[19]

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argument that "SLUSA's definition of a 'covered class action' may be applied to preempt claims only at the time of their removal, not at the motion to dismiss stage").

[19] Neither the reasons for consolidation nor the fact that individual cases in the group may have fewer than fifty plaintiffs matters for the purposes of SLUSA's covered class action definition. It is sufficient that the group of lawsuits collectively seeks relief for more than fifty persons. And, SLUSA requires only that the cases have been "consolidated . . . for any purpose." *Cf. Instituto*, 546 F.3d at 1347. Here, in any case, because both groups of plaintiffs were "act[ing] in unison" from the beginning, they were "proceed[ing] as a single action"and would have satisfied the group provisions of SLUSA's covered class action definition even without consolidation. *Enron*, 535 F.3d at 340; *see also* Pls.' Mot. to Transfer and accompanying exhibits in *Roland* [3] and *Farr* [3].

D. The Plaintiffs Bring Exclusively State Law Claims

The Plaintiffs indisputably bring claims "based upon the statutory or common law of" Louisiana. 15 U.S.C. § 77p(b). The Plaintiffs assert negligence, breach of contract, negligent misrepresentation, and breach of fiduciary duty claims under Louisiana law. The Plaintiffs also allege violations of the Louisiana Unfair Trade Practices Act and the Louisiana Securities Act. Accordingly, this action satisfies SLUSA's causes-of-action element.

E. The Court Dismisses this Action

This action qualifies for SLUSA preclusion. Both this case and *Farr*, as consolidated and proceeding individually, constitute "covered class actions" under SLUSA. The Plaintiffs bring exclusively state-law claims and allege that they suffered damages from the Defendants' misrepresentations and omissions made "in connection with" the sale of SLUSA-covered securities under two separate theories: The Plaintiffs allege that the Defendants induced the Plaintiffs' CD purchases by representing that the SIB CDs were backed by SIB's investments in securities that typically qualify as SLUSA-covered securities. The complaint also suggests that at least one Plaintiff exchanged IRA investments in SLUSA-covered securities for SIB CDs. And, as in *Rowinski*, this Court "need not decide whether a count-by-count analysis is appropriate in this case, because [the Plaintiffs have] incorporated every [relevant] allegation into every count in [their Petition]. [The Court's]

SLUSA analysis therefore applies to each of [the Plaintiffs'] counts, and compels the conclusion that each is preempted." 398 F.3d at 305. The Court therefore holds that SLUSA precludes the Plaintiffs from bringing this action.

CONCLUSION

When the Removing Defendants filed their notice of removal, no Defendants had been served. Thus, no Defendants were required to consent to removal. SEI remained free to present an independent basis for removal, and SLUSA provides an appropriate federal jurisdictional hook. Because the Plaintiffs bring claims "based upon the statutory or common law of" Louisiana and "alleging . . . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security," 15 U.S.C. § 77p(b)(1), SLUSA precludes this action. Accordingly, the Court dismisses this action with prejudice.

Signed August 31, 2011.

David C. Godbey
United States District Judge

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Civil Action No. 3:09-CV-1274-N

SAMUEL TROICE, *et al.*,
Plaintiffs,

v.

WILLIS OF COLORADO, INC., *et al.*,
Defendants.

FILED: October 27, 2011

ORDER

This Order addresses Plaintiffs' notice of voluntary dismissal of individual claims without prejudice [154] and Defendants Willis of Colorado's and Bowen Miclette & Britt, Inc.'s motions to dismiss Plaintiffs' third amended class action complaint [123, 127]. Because Plaintiffs' notice of voluntary dismissal of individual claims is unopposed, the Court grants Plaintiffs' motion and dismisses Plaintiffs' individual claims without prejudice. Because Plaintiffs bring class claims "based upon the statutory or common law of" Texas and "alleging . . . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security," 15 U.S.C. § 77p(b)(1), as

discussed in the Court's Order of August 31, 2011 in *Roland v. Green* [3:10-cv-0224-N, doc. 72], the Securities Litigation Uniform Standards Act of 1998 precludes this action. Accordingly, the Court grants Defendants' motions and dismisses Plaintiffs' class claims with prejudice.[1]

Signed October 27, 2011.

David C. Godbey
United States District Judge

[1] The Court grants Defendant Winter's motion to join in Bowen Miclette & Britt, Inc.'s motion to dismiss [124], and denies all other pending motions as moot [37, 40, 101, 106, 148, 153].

OPPOSITION BRIEF

Supreme Court, U.S.
FILED
AUG 16 2012
OFFICE OF THE CLERK

No. 12-86

IN THE

Supreme Court of the United States

WILLIS OF COLORADO, INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; AND SEI INVESTMENTS COMPANY,
Petitioners,

v.

SAMUEL TROICE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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August 16, 2012

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTION PRESENTED

Whether the United States Supreme Court has jurisdiction to consider the petition for writ of certiorari of SEI Investments Company ("SEI") based upon the prior ruling of this Court in *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (U.S. 2006), after the claims of the *Roland* and *Farr* Plaintiffs against SEI were remanded to the Nineteenth Judicial District Court, Parish of East Baton, State of Louisiana by the United States Fifth Circuit Court of Appeals on April 27, 2012?

PARTIES TO THE PROCEEDING

The *Roland* and *Farr* Respondents are: James Roland; Susan Roland; Michael J. Giambrone; Thomas E. Bowden, individually and on behalf of The Thomas E. Bowden SEP IRA; T.E. Bowden, Sr. RET. TRUST; G. Kendall Forbes, individually and on behalf of G. Kendall Forbes IRA; Deborah S. Forbes, individually and on behalf of The Deborah S. Forbes IRA; William Bruce Johnson on behalf of The Benton Bruce Johnson Trust #1; William Bruce Johnson on behalf of The Mark Calvin Johnson Trust #1; William Bruce Johnson on behalf of The Martha J. C. Johnson GEN SKPG TR-SAS; William Bruce Johnson on behalf of The Aimee Lynn Johnson Trust #1-SAS; William Bruce Johnson on behalf of The Benton B. Johnson TEST TR II-SAS; Terence Beven, individually and on behalf of Terence Beven IRA; Thomas J. Moran; Ralph D. D'Amore, individually and on behalf of Ralph D. D'Amore on behalf of FBO Ralph Daniel D'Amore MD A Professional Corp., Ralph D. D'Amore IRA; Daniel P. Landry, individually and on behalf of Daniel P. Landry IRA; Ronald R. Marston, individually and on behalf of Ronald R. Marston IRA; Rodney P. Starkey, individually and on behalf of Rodney P. Starkey IRA; Stephen Wilson, individually and on behalf of Bone And Joint Clinic FBO Stephen Wilson; Jeanne Anne Mayhall, individually and on behalf of Microchip ID Services Inc. Retirement Plan; John Wade, individually and on behalf of Microchip ID Services Inc. Retirement Plan; Lynn J. Philippe, individually and on behalf of Lynn J. Philippe IRA; Leah Farr; Troy Lillie; Kenneth Dougherty; Charles White; Martha Jean Witmer; Sharon Witmer; Olivia Sue Warnock; Clyde J. Chisholm; Ronald McMorris; Arthur Ordoyne; William Dawson; Terry Tullis; James Stegall; Anthony Ventrella; Robert

Smith; Thomas Slaughter; Larry Perkins; William Phillips; Charles Hart; Richard Feucht; Lonnie Ordoyne; Arthur Waxley; Darrell Courville; Merrill Laplante; James Brown; Ira Causey; Jerry Burris; Jacqueline Millet; Louis Mier; Mamie Baumann; Charles Sanchez; Joseph Chustz, Jr.; Robert Bush; Bobby Nix; Claude Marquette; Gwen Fabre; Robert Schwendimann; Wanda Bevis; Terry Tarver; Marcel Dumestre; Ronald Valentine; Bennie O'Rear; Julie Savoy; Laura Lee; Dennis Kirby; Billie Ruth McMorris; Larry Smith; Kenneth Wilkewitz; Murphy Buell; Kerry Kling; Lynn Gildersleeve Michelli; Willa Mae Gildersleeve; Anita Ellen Carter; Fred Demarest; Nancy Gill; Linda Boyd; Virginia Buscheme; Robert Gildersleeve; Walter Stone; Virginia McMorris; Carol Stegall; Monty Perkins; Joan Feucht; Kathleen Mier; Mamie Sanchez; Margaret S. Nix; Margaret Dumestre; Claudia O'Rear; Gordon C. Gill; John Buscheme; Charles Massey; and Gary Magee (collectively referred to herein as the "*Roland* Plaintiffs").

The Petitioners are Willis of Colorado, Inc., Willis Group Holdings Limited, Willis Limited, Bowen, Miclette & Britt, Inc., and SEI Investments Company. Only SEI is a party to the *Roland* and *Farr* cases.

Additional defendants in the *Roland* and *Farr* suits include Jason Green, Grady Layfield, Hank Mills, Charles Jantzi, Tiffany Angelle, James Fontenot, Thomas Newland, Gary Haindel, Timothy Parsons, John Schwab, Jay Comeaux, Alvaro Trullenque, Zach Parrish, Bernard Young, Lena Stinson, Rhonda Lear, Jack Bruno, J.D. Perry, Joe Klingen, Russ Newton, Danny Bogar, Jim Weller, The Stanford Trust Company, Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183,

Dirk Harris, Arlen Tiger Blackwell, Ron Clayton, James Keith Cox, Timothy E. Parsons, Charles Rawl, and Michael Word.

Plaintiffs in the *Troice* suit include Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Daniel Gomez Ferreiro, Manuel Canabal, Martha Diaz, and Paul Gilly-Flores. Additional defendants in the *Troice* suit include Bowen, Miclette & Britt, Inc., Amy S. Baranoucky, and Robert S. Winter.

The Court Appointed Receiver in the Stanford Receivership is Ralph S. Janvey. The Court Appointed Examiner in the Stanford Receivership is John J. Little.

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IN THE

Supreme Court of the United States

No. 12-86

WILLIS OF COLORADO, INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; AND SEI INVESTMENTS COMPANY,

Petitioners,

v.

SAMUEL TROICE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF IN OPPOSITION

OPINION BELOW

The Fifth Circuit's March 19, 2012 ruling, which remanded the *Roland* and *Farr* cases to Louisiana state district court, is reported at *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012). An excerpt from this opinion is attached in Appendix A herein and in full at Petitioners' Appendix 1-43.

STATEMENT OF JURISDICTION

This Court has no subject matter jurisdiction over the *Roland* and *Farr* Respondents based upon the case of *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (U.S. 2006), as the *Roland* and *Farr* cases were remanded to the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana upon issuance of the mandate by the U.S. Fifth Circuit Court of Appeals on April 27, 2012. These cases are in fact presently pending in the Louisiana state court.

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1447(d) provides:

§ 1447. Procedure after removal generally

* * *

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

INTRODUCTION

Respondents, the *Roland* Plaintiffs, respectfully submit this Brief in Opposition to the Petition for Writ of Certiorari filed with this Honorable Court by SEI on July 18, 2012. In its writ, SEI fails to inform this Court that the *Roland* and *Farr* cases that were part of the consolidated action in front of the United States Fifth Circuit Court of Appeals have been remanded to the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of

Louisiana. As such, this Honorable Court does not have subject matter jurisdiction over the *Roland* and *Farr* suits. *See Kircher v. Putnam Funds Trust*, 547 U.S. 633, 641-642 (U.S. 2006).

STATEMENT OF THE CASE

Two groups of Louisiana investors, represented by the same counsel, filed separate lawsuits in the Nineteenth Judicial District Court, East Baton Rouge Parish on August 19, 2009—*Roland v. Green* and *Farr v. Green*.[1] In those actions, each set of plaintiffs sued the SEI Investments Company ("SEI"), the Stanford Trust Company (the "Trust"), the Trust's employees, and the Trust's investment advisors (collectively, the "SEI Defendants") for their alleged role in the Stanford Ponzi scheme. The plaintiffs alleged violations of Louisiana law including breach of contract, negligent representation, breach of fiduciary duty, unfair trade practices, and violations of the Louisiana Securities Act.

The plaintiffs in the *Roland* and *Farr* actions (the "*Roland* Plaintiffs") allege that Stanford International Bank ("SIB") sold certificates of deposit ("CDs") to the Trust (located in Baton Rouge, Louisiana), which in turn served as the custodian for all individ-

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[1] The procedural background of the case is set forth in the opinion of the Fifth Circuit Court of Appeals, which is reproduced at Petitioners' App. 7-9; *see also Roland v. Green*, 675 F.3d 503, 508-509 (5th Cir. 2012); *see also James Roland, et al. v. Jason Green, et al.*, Docket No. 3:09CV686, U.S. District Court, Middle District of Louisiana and Docket No. 3:10CV224, U.S. District Court, Northern District of Texas, Dallas Division; *see also Leah Farr, et al. v. Jason Green, et al.*, Docket No. 3:09CV678 U.S. District Court, Middle District of Louisiana and Docket No. 3:10CV225, U.S. District Court, Northern District of Texas, Dallas Division.

ual retirement account ("IRA") purchases of CDs. According to the plaintiffs, the Trust contracted with SEI to have SEI be the administrator of the Trust, thereby making SEI responsible for reporting the value of the CDs. Plaintiffs finally allege misrepresentations by SEI induced them into using their IRA funds to invest in the CDs.

The SEI Defendants sought removal to the United States District Court for the Middle District of Louisiana on the basis that the Securities Litigation Uniform Standards Act of 1998, 15 U.S.C. § 78bb ("SLUSA"), precluded the state court from entertaining the suits. In September 2009, the *Roland* and *Farr* Plaintiffs filed a motion to remand. The Multi–District Litigation ("MDL") Panel subsequently transferred the cases to the Northern District of Texas (Judge Godbey) where the separate *Roland* and *Farr* suits were consolidated.

In conjunction with their opposition to the motion to remand, the SEI Defendants filed a motion to dismiss pursuant to the provisions of SLUSA, claiming that SLUSA gave the federal courts jurisdiction over the claims of the *Roland* and *Farr* Plaintiffs. The Northern District of Texas agreed, denying the motion to remand and granting the motion to dismiss. In its ruling, Judge Godbey also dismissed claims brought by a group of Latin American investors (the "*Troice* Plaintiffs") against, respectively, SIB's insurance brokers (the "*Willis* Defendants") and SIB's lawyers (the "*Proskauer* Defendants").

The *Roland* action was then consolidated on appeal with the *Troice* action and the *Willis* action. The United States Fifth Circuit Court of Appeals reversed the decision of the district court, finding that SLUSA

was not applicable to the claims brought by the *Roland* and *Farr* Plaintiffs against SEI. App. A.

In SEI's statement of the case in its petition for writ of certiorari, SEI omits the most important procedural fact now before this Honorable Court. As a result of finding that SLUSA was not applicable to the claims of the *Roland* and *Farr* Plaintiffs, the case has already been remanded to the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana. *Roland v. Green*, 675 F.3d 503, 524 (5th Cir. 2012).

After denying SEI's motion for rehearing en banc, the Fifth Circuit issued a mandate on April 27, 2012 to the United States District Court for the Northern District of Texas, ordering the district court to proceed according to the terms of the Fifth Circuit's opinion. App. B and C. As a result, the United States District Court for the Northern District of Texas issued an order remanding the *Roland* and *Farr* actions to the Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana on May 15, 2012 and May 25, 2012, respectively. App. D and E. Thus, the *Roland* and *Farr* actions are now back where they started in Louisiana state court. As a result of this, and pursuant to the well-established law of this Honorable Court, SEI has no right seek review of a matter that has been remanded to state court, as the federal courts lack subject matter jurisdiction over the cases. *See Kircher v. Putnam Funds Trust*, 547 U.S. 633, 641-642 (U.S. 2006).[2]

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[2] A factual recitation of the *Roland* and *Farr* cases is set forth in the opinion of the Fifth Circuit Court of Appeals, which is reproduced at Petitioners' App. 7-9; *see also Roland v. Green*, 675 F.3d 503, 508-509 (5th Cir. 2012).

REASONS FOR DENYING THE WRIT

I. THE COURT HAS NO SUBJECT MATTER JURISDICTION OVER THE *ROLAND* AND *FARR* ACTIONS

Once a mandate has issued remanding a removed action back to state court, there is no right to appeal this decision or seek review of this decision with a higher court. In the seminal case of *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (U.S. 2006), which is almost exactly on point with the facts now before the Court, this Honorable Court held that once a lower court orders a remand of an action removed from state court pursuant to SLUSA, there is no right of appeal or review by a higher court from that remand order pursuant to 28 U.S.C. §1447(d).

A. The Statutory Limitation Of 28 U.S.C. §1447(d)

The clear statutory language of 28 U.S.C. §1447(d) provides that an "order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." Here, there is an order remanding the *Roland* and *Farr* actions to the Louisiana state court. App. A, page 3a; App. D and E. Thus, under a plain reading of the statute, there is no right of review of the order of the United States Fifth Circuit Court of Appeals remanding these cases to Louisiana state court. This order was implemented via the mandate of the Fifth Circuit (App. C) and the remand orders of the Northern District of Texas. App. D and E. Thus, the *Roland* and *Farr* actions are now ongoing in Louisiana state court. This application of the statute is affirmed by this Court's decision in *Kircher*.

B. Under The Authority Of *Kircher* And Subsequent Jurisprudence, There Is No Right Of Review Of The Remand Order

In *Kircher*, the plaintiff brought various Illinois state law negligence and breach of fiduciary duty claims against funds, investment advisors, and insurance companies for devaluation of mutual fund holdings against various mutual fund companies, investment advisors and insurers. After removal to federal district court based on allegations that the state law claims were subject to SLUSA, the federal district court ordered that the suits all be remanded, finding that SLUSA did not apply, resulting in a lack of subject matter jurisdiction for the federal court. The United States Seventh Circuit Court of Appeals disagreed, and this Honorable Court granted writs on the question whether 28 U.S.C. §1447(d) bars review of remand orders in cases removed under the SLUSA.

After an extensive review of the jurisprudence interpreting 28 U.S.C. §1447(d) and the jurisdictional and preclusion sections of SLUSA, this Court, relying on the authority of *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 351-352 (1976) found that, however the argument is characterized, once a lower court finds SLUSA not applicable to the claims brought by the plaintiff and remands the matter to state court, there is no review of this decision, appellate or otherwise, available, as the reviewing courts lack subject matter jurisdiction over the claims. *Kircher*, 547 U.S. at 648. In *Kircher*, this Court stated, "We hold that [SLUSA] does not exempt remand orders from 28 U.S.C. §1447(d) and its general rule of nonappealability. We therefore vacate the judgment of the Court of Appeals and remand the

case with instructions to dismiss the appeal for lack of jurisdiction." *Id.*

Such a result is dictated in these cases now before the Court. There is no right of review of the decision of the United States Fifth Circuit Court of Appeals remanding these cases to Louisiana state court. This order was implemented via the mandate of the Fifth Circuit (App. C) and the remand orders of the Northern District of Texas. App. D and E. This action is now ongoing in Louisiana state court and 28 U.S.C. § 1447(d) prevents any review of this action.

This result has been continuously followed by the lower courts. As noted by the Fifth Circuit in the recent case of *BEPCO, L.P. v. Santa Fe Minerals, Inc.*, 675 F.3d 466, 470 (5th Cir. 2012), "Any order issued on the grounds authorized by Section 1447(c) is immunized from all forms of appellate review, whether or not that order might be deemed erroneous by an appellate court. *Kircher v. Putnam Funds Trust*, 547 U.S. 633, 640, 126 S.Ct. 2145, 165 L.Ed.2d 92 (2006)." *See also Calabro v. Aniqa Halal Live Poultry Corp.*, 650 F.3d 163, 165 (2nd Cir. 2011); *Saginaw Housing Com'n v. Bannum, Inc.*, 576 F.3d 620, 624 (6th Cir. 2009); *Moody v. Great Western Ry. Co.*, 536 F.3d 1158, 1164 (10th Cir. 2008) ("While this determination may have been legally erroneous, '[w]here the order is based on one of the [grounds enumerated in 28 U.S.C. § 1447(c)], review is unavailable no matter how plain the legal error in ordering the remand,' *Kircher*, 547 U.S. at 642, 126 S.Ct. 2145").

Thus, the result is clear. This Honorable Court lacks subject matter jurisdiction over the *Roland* and *Farr* actions. The matter has been remanded and

there is no review of this remand pursuant to 28 U.S.C. §1447(d).

C. There Is No Dispute That Remand Has Occurred

As noted above, the decision of the United States Fifth Circuit Court of Appeals remanded these cases to Louisiana state court. This order was implemented via the mandate of the Fifth Circuit (App. C) and the remand orders of the Northern District of Texas. App. D and E. Thus, it cannot be disputed that remand has factually occurred and this action is now ongoing in Louisiana state court. As held in *U.S. v. Rivera*, 844 F.2d 916 (2nd Cir. 1988), jurisdiction follows mandate and the effect of the mandate is to bring the proceedings in the case on appeal to a close and to remove it from jurisdiction of that court, returning it to the forum from which it came. Presently, there is a mandate by the Fifth Circuit returning the action to the Northern District of Texas and an order from the Northern District remanding the cases to Louisiana state court. This Honorable Court has no subject matter jurisdiction as dictated by 28 U.S.C. §1447(d).

REQUEST FOR DAMAGES AND COSTS PURSUANT TO SUPREME COURT RULE 42.2

The *Roland* Plaintiffs seek attorneys fees and costs of filing this brief in opposition, including printing costs, against SEI based upon its meritless petition for writ of certiorari that was filed in total disregard of the existing precedent under *Kircher*. Most of the *Roland* Plaintiffs are retirees, who have little or no financial ability to continue to fund the cost of this litigation. It is sanctionable conduct for SEI to file

the petition for writ of certiorari under another case heading without addressing the adverse case law that exists based upon *Kircher* given the expertise of its counsel.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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August 16, 2012

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Filed March 19, 2012]

No. 11-10932

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and on Behalf of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

LEAH FARR; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN

UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

Consolidated with 11-11031

SAMUEL TROICE; HORACIO MENDEZ; ANNALISA MENDEZ; PUNGA PUNGA FINANCIAL, LIMITED, individually and on behalf of a class of all others similarly situated,
Plaintiffs-Appellants

v.

PROSKAUER ROSE, L.L.P.; THOMAS V. SJOBLOM; P. MAURICIO ALVARADO; CHADBOURNE AND PARKE, L.L.P.,
Defendants-Appellees

Consolidated with 11-11048

SAMUEL TROICE; MARTHA DIAZ; PAULA GILLY-FLORES; PUNGA PUNGA FINANCIAL, LIMITED, Individually and on behalf of a class of all others similarly situated; PROMOTORA VILLA MARINO, CA; DANIEL GOMEZ FERREIRO; MANUEL CANABAL,
Plaintiffs-Appellants

v.

WILLIS OF COLORADO INCORPORATED; WILLIS GROUP HOLDGINGS LIMITED; AMY S. BARANOUCKY; ROBERT S. WINTER; BOWEN, MICLETTE & BRITT, INCORPORATED; WILLIS LIMITED,
Defendants-Appellees

Appeals from the United States District Court
for the Northern District of Texas

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

EDWARD C. PRADO, Circuit Judge:

* * *

VI

For the foregoing reasons, the judgments are REVERSED. The *Troice* cases are remanded to the district court, and the *Roland* case is remanded to the state court.

REVERSED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed 04/19/2012]

No. 11-10932

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and on Behalf of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

LEAH FARR; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN

UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

Consolidated with 11-11031

SAMUEL TROICE; HORACIO MENDEZ; ANNALISA MENDEZ; PUNGA PUNGA FINANCIAL, LIMITED, individually and on behalf of a class of all others similarly situated,
Plaintiffs-Appellants

v.

PROSKAUER ROSE, L.L.P.; THOMAS V. SJOBLOM; P. MAURICIO ALVARADO; CHADBOURNE AND PARKE, L.L.P.,
Defendants-Appellees

Consolidated with 11-11048

SAMUEL TROICE; MARTHA DIAZ; PAULA GILLY-FLORES; PUNGA PUNGA FINANCIAL, LIMITED, Individually and on behalf of a class of all others similarly situated; PROMOTORA VILLA MARINO, CA; DANIEL GOMEZ FERREIRO; MANUEL CANABAL,
Plaintiffs-Appellants

v.

WILLIS OF COLORADO INCORPORATED; WILLIS GROUP HOLDGINGS LIMITED; AMY S. BARANOUCKY; ROBERT S. WINTER; BOWEN, MICLETTE & BRITT, INCORPORATED; WILLIS LIMITED,
Defendants-Appellees

Appeals from the United States District Court
for the Northern District of Texas

ON PETITION FOR REHEARING EN BANC

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:

Treating the Petitions for Rehearing En Banc as Petitions for Panel Rehearing, the Petitions for Panel Rehearing are DENIED.

No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (Fed. R. App. P and 5th Cir. R. 35), the Petitions for Rehearing En Banc DENIED.

ENTERED FOR THE COURT:

/s/ Edward C. Prado
United States Circuit Judge

P.S. Chief Judge Jones and Judges Smith and Haynes did not participate in the consideration of the rehearing en banc.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

[Filed March 19, 2012]

No. 11-10932

D.C. Docket No. 3:10-CV-224
D.C. Docket No. 3:10-CV-225

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and on Behalf of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1966, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

LEAH FARR; ET AL,
Plaintiffs-Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants-Appellees

Appeal from the United States District Court for the Northern District of Texas, Dallas

---

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that defendants-appellees pay to plaintiffs-appellants the costs on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE:

A True Copy
Attest

Clerk, U.S. Court of Appeals, Fifth Circuit

By: _____
Deputy

New Orleans, Louisiana

APPENDIX D

[Posted May 15, 2012]

Clerk of Court

East Baton Rouge

Re: #581479 19th District Court,
Parish of East Baton Rouge

Per judgment and opinion from the 5th Circuit United States Court of Appeals, This case is being remanded back to your court. Please contact our Court if you need additional information.

Best regards

Sonia VanCamp
CV/CR Appeals Clerk
U.S. District Court
Northern District of Texas
sonia_vancamp@txnd.uscourts.gov
(214) 753-2174

RECEIVED

MAY 15, 2012

DEPUTY CLERK OF COURT

APPENDIX E

UNITED STATES DISTRICT COURT
Northern District of Texas

[Posted May 29, 2012]

Karen Mitchell
Clerk of Court

Dallas Division

[Received May 25, 2012]

East Baton Rouge Parish Clerk of Court
P.O. Box 1991
Baton Rouge, LA 70821-1991

RE: 581,480

Style: Leah Farr, et al v. Jason Green et al

Dear Clerk:

Enclosed is a certified copy of an Order and/or Judgment remanding the above captioned case back to the 19th DC, Parish of East Baton Rouge , ,581,480 "26" along with a copy of the docket sheet.

If you have any questions regarding this mattter, I may be reached at 214-753-2174.

Sincerely,
Karen Mitchell, Clerk

By: /s/ S. VanCamp
Deputy Clerk

OPPOSITION BRIEF

RECORD AND BRIEFS

RECEIVED 2012

In The Supreme Court of the United States

CHADBOURNE & PARKE LLP,

Petitioner,

v.

SAMUEL TROICE, ET AL.,

Respondents.

On Petitions For Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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QUESTIONS PRESENTED

The Securities Litigation Uniform Standards Act ("SLUSA") precludes state-law class actions "by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). Here, the plaintiffs were purchasers of certificates of deposit issued by Stanford International Bank ("SIB"). The CDs themselves were not "covered securities" within the meaning of SLUSA, because SIB never registered the CDs nor were they traded on a national exchange. *See* 15 U.S.C. § 77r(b). After canvassing the various formulations that circuit courts have used to describe when fraud occurs "in connection with" an investment, the Fifth Circuit held that the present cases were not precluded by SLUSA. The Fifth Circuit further held that SLUSA did not preclude claims against aiders and abettors who did not make any misrepresentations to claimants "in connection with the purchase or sale of a covered security," but instead made misrepresentations to the SEC obstructing an SEC investigation to uncover the fraud.

The questions presented are:

1. Whether SLUSA precludes state-law class actions alleging that the plaintiffs were fraudulently induced into investing in uncovered debt securities such as CDs by promises of above-market returns and false assurances that the issuing bank's assets were invested in highly-marketable securities.

QUESTIONS PRESENTED – Continued

2. Whether SLUSA precludes state-law class actions alleging that defendants aided and abetted fraud in the sale of uncovered securities when the defendants themselves did not make misrepresentations to the plaintiffs, but did make misrepresentations that obstructed regulatory authorities' investigation of the fraud.

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INTRODUCTION

The petitions for certiorari do not raise any question that warrants review by this Court. There is no substantial outcome-determinative conflict between the Fifth Circuit's holding in this case and the decisions of other courts of appeal over the scope of SLUSA preclusion. Although the lower courts' formulations of the rule for determining when a misrepresentation is made "in connection with the purchase or sale of a covered security" differ slightly, these minor variations do not create a substantial conflict meriting review by this Court. And even if the Court were disposed to clarify the standard for SLUSA preclusion, this case does not present an appropriate vehicle for doing so, because SLUSA would not preclude these actions under any permutation of the rule as adopted by any circuit court. These actions do not allege a fraudulent scheme "involving," "dependent upon," "coinciding with," or "more than tangentially related" to misrepresentations about covered securities.

Nor does the Fifth Circuit opinion create a circuit conflict concerning whether SLUSA precludes claims against alleged aiders and abettors. Because the primary perpetrators in this case did not make misrepresentations in connection with the purchase or sale of covered securities, and hence the claims against those parties were not precluded, claims against the aiders and abettors of those non-precluded parties were likewise not precluded.

The petitions for certiorari should therefore be denied.

STATEMENT OF THE CASE

A. Statutory Background

In 1995, because of "perceived abuses of the class-action vehicle in litigation involving nationally traded securities," Congress passed the Private Securities Litigation Reform Act ("PSLRA"). *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006). "Its provisions limit recoverable damages and attorney's fees, provide a 'safe harbor' for forward-looking statements, impose new restrictions on the selection of (and compensation awarded to) lead plaintiffs, mandate imposition of sanctions for frivolous litigation, and authorize a stay of discovery pending resolution of any motion to dismiss." *Id.*, *citing* 15 U.S.C. § 78u-4.

To avoid "the restrictive conditions set forth by the PSLRA, plaintiffs began filing class-action securities lawsuits under state law, often in state court." *In re Enron Corp. Secs.*, 535 F.3d 325, 337 (5th Cir. 2008), *citing Dabit*, 547 U.S. at 82. "To stem this shift from Federal to State courts and prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the [PSLRA], Congress enacted SLUSA." *Dabit*, 547 U.S. at 82 (internal quotation marks omitted).

In pertinent part, SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). To effectuate this bar, SLUSA provides that "[a]ny covered class action brought in any State court involving a covered security . . . shall be removable to the Federal district court" and subject to dismissal. 15 U.S.C. § 78bb(f)(2).

B. Factual Background and Procedural History

These cases arise from a massive Ponzi scheme perpetrated by R. Allen Stanford and entities under his control, including Stanford International Bank ("SIB"). App. 6a.[1] The perpetrators sold certificates of deposit issued by SIB by promising above-market returns and falsely assuring investors that the CDs were backed by SIB's safe liquid investments in "highly marketable securities issued by stable governments, strong multinational companies and major international banks." App. 64a. In reality, however, "SIB had to use new CD sales proceeds to make interest and redemption payments on existing CDs,

---

[1] References in this brief will be to the appendix to the petition for certiorari in No. 12-79, *Chadbourne & Parke LLP v. Troice*.

because it did not have sufficient assets, reserves and investments to cover its liabilities." App. 6a, *quoting Janvey v. Alguire*, 647 F.3d 585, 590 (5th Cir. 2011).

The cases in this Court comprise four cases as filed in the trial courts. In the first two cases (*Roland* and *Farr*), numerous (more than fifty) individual plaintiffs, asserting violations of Louisiana law, sued SEI Investments Company ("SEI"), the Stanford Trust Company, and related entities (the "SEI Defendants") in state court. They alleged that the SEI Defendants induced them to purchase SIB CDs by representing: that the CDs could be "readily liquidated"; that SIB was "competent and proficient" and "employed a sizeable team of skilled and experienced analysts to monitor and manage [its] portfolio," the value of which was "verified" by "independent" auditors; that companies in which SIB invested were adequately capitalized; that the CDs were "safe investment vehicles suitable for long-term investment with little or no risk"; that SIB legal counsel ensured that investments were structured to comply with state and federal law; that the CDs would produce "consistent double-digit returns"; and that SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies and major international banks." App. 8a. The cases were removed to federal court, transferred to the Northern District of Texas, and consolidated. *Id.*

A third case (*Willis*) was brought in federal court by the Troice plaintiffs as a class action against SIB's

insurance brokers (the "Willis Defendants"). The Troice plaintiffs alleged that the Stanford entities or the Willis Defendants had represented: that the CDs were a good investment because SIB was "regulated by the U.S. government," "insured by Lloyds," "regulated by the Antiguan banking regulatory commission," and "subjected to regular stringent risk management evaluations conducted by an outside audit firm"; that the CDs were safe and secure; that SIB's portfolio produced "consistent double-digit returns" and the CDs' "high return rates . . . greatly exceed those offered by commercial banks in the United States"; and that SIB's assets were "invested in a well diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." App. 9a.

The fourth case (*Proskauer*) was brought by the Troice plaintiffs as a class action against the Stanford entities' attorneys (the "Proskauer Defendants," including Chadbourne & Parke LLP), alleging that they conspired with and aided and abetted Stanford in violating the securities laws, by lying to the SEC and assisting Stanford to evade regulatory oversight. App. 9a, 41a.

All the Stanford-related cases were assigned to the same district judge, who decided to "select one case initially in which to address the applicability of [SLUSA]." App. 10a. The district court chose *Roland/Farr* and held that it was precluded by SLUSA. App. 73a. The court acknowledged that the SIB CDs themselves were not "covered securities within the

meaning of SLUSA." App. 60a. Nevertheless, it held that the plaintiffs alleged a fraudulent scheme that coincided with and was dependent upon the sale of SLUSA-covered securities, for two reasons. The first was that "Plaintiffs' CD purchases were induced by a belief that SIB CDs were backed in part by investments in SLUSA-covered securities." App. 66a. Second, the court inferred that "at least one of the Plaintiffs acquired SIB CDs with proceeds of selling SLUSA-covered securities in their IRA portfolios." App. 69a.

The district court applied its reasoning in *Roland/Farr* to dismiss the Troice plaintiffs' complaints against the Willis and Proskauer Defendants. App. 13a.

The plaintiffs appealed to the Fifth Circuit, which consolidated the appeals and ultimately reversed.

Initially, the court found "not particularly descriptive" the rule announced in *SEC v. Zandford*, 535 U.S. 813 (2003), in the Rule 10b-5 context, and imported into SLUSA by *Dabit*, that the fraud in question must "coincide" with a securities transaction. App. 16a. The court noted that when this Court first set forth the "coincide" requirement, it cautioned that "the statute must not be construed so broadly as to convert every common law fraud that happens to involve [covered] securities into a violation of § 10(b)." App. 16a, *quoting Zandford*, 535 U.S. at 820. In light of this admonition, the Fifth Circuit found it helpful to consider how

sister circuits had construed and applied the "coincide" requirement.

The Fifth Circuit found most persuasive the decisions from the Second, Sixth, Ninth, and Eleventh Circuits, because the cases from other circuits "do not attempt to define the 'coincide' requirement, but merely discuss what connection above and beyond 'coincide' is sufficient." App. 17a. "Each of the circuits that has tried to contextualize the 'coincide' requirement has come up with a slightly different articulation of the requisite connection between the fraud alleged and the purchase or sale of securities (or representations about the purchase or sale of securities)." App. 20a. Accordingly, the court found it helpful to consider "cases where the fraud alleged was centered around the purchase or sale of an uncovered security, like the CDs at issue in this appeal." *Id.*

Next, the court analyzed policy considerations, in particular Congress's explicit concern about the distinction between national covered securities and other, uncovered securities. App. 27a. The court concluded that it was Congress's intent that SLUSA be applied only to transactions involving nationally-traded securities, recognizing "the importance of maintaining the vital role of state law in regulating non-national securities," and acknowledging the importance of "'preserving the appropriate enforcement powers of state regulators, and the right of individuals to bring suit.'" App. 28a. In addition, in the circuit court's view, over-extension of SLUSA would threaten state debtor/creditor regimes because "[e]very bank

and almost every company owns some covered securities in its portfolio, and every debt instrument issued by these banks and companies is backed by this portfolio in the same way the CDs here were ultimately backed by the assets in SIB's portfolio." App. 29a. Hence, "[t]he interpretation of SLUSA and the 'in connection with' requirement adopted by the District Court . . . could potentially subsume any consumer claims involving the exchange of money or alleged fraud against a bank, without regard to the product that was being peddled." App. 29a.

The Fifth Circuit then considered the Eleventh Circuit test employed by the district court – whether plaintiffs premise their claims on either "fraud that induced [the plaintiffs] to invest . . . or a fraudulent scheme that coincided and depended upon the purchase or sale of securities." App. 64a, *quoting Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) ("*IPM*"). The court disfavored the first prong of the test – whether the fraud induced the plaintiffs to invest with the defendant – because viewing the allegations from the plaintiffs' perspective unnecessarily imports causation into the test. App. 30a. The court found that the second prong – whether the fraudulent scheme coincided and depended upon the purchase or sale of a covered security – was more faithful to *Dabit* and was very similar to the Second Circuit's test, under which SLUSA preclusion is appropriate where plaintiff's claims "necessarily allege," "necessarily involve," or "rest on the purchase or sale of securities." App. 31a, *quoting*

Romano v. Kazacos, 609 F.3d 512, 522 (2d Cir. 2010). But it was still too stringent, the court believed, because some securities transactions could "coincide" with but not "depend upon" a securities transaction. App. 31a-32a.

In the circuit court's view, the Ninth Circuit test best articulates the "coincide" requirement: "A misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are more than tangentially related." App. 32a, *quoting Madden v. Cowen & Co.*, 576 F.3d 957, 965-66 (9th Cir. 2009).

Applying this standard, the Fifth Circuit held that the fraudulent scheme alleged in the cases at bar was not more than tangentially related to the purchase or sale of covered securities and, therefore, not sufficiently connected to such purchases or sales to trigger SLUSA preclusion. App. 38a. The court determined that the "heart, crux and gravamen" of the SEI and Willis Defendants' allegedly fraudulent scheme was representing that the CDs were a "'safe and secure' investment that was preferable to other investments because of their liquidity, consistently high rates of return, and the fact that SEI and other regulators were keeping a watchful eye on SIB." App. 36a-37a. Similarly, the "safety and soundness letters" sent by the Willis Defendants focused on the "professionalism" of SIB and "stringent" reviews. *Id.* "That the CDs were marketed with some vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities" was in the court's view,

"tangential to the schemes advanced by the SEI and Willis Defendants." *Id.*

This conclusion was bolstered by the fact that the CDs, like the uncovered hedge funds in *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities LLC*, 750 F. Supp. 2d 450 (S.D.N.Y. 2010), were not mere "ghost entities" or "cursory pass-through vehicles" to invest in covered securities: "The CDs were debt assets that promised a fixed rate of return not tied to the success of any of SIB's purported investments in the 'highly marketable securities issued by stable national governments, strong multinational companies and major international banks.' Unlike in the Madoff feeder fund cases, 'plaintiffs could [not] claim that they deposited their money in the bank for the purpose of purchasing covered securities.'" App. 37a.

Finally, the court concluded that the fact that some of the plaintiffs sold covered securities to purchase CDs was not a sufficient connection between the fraud and the sale of covered securities because, "unlike *Bankers Life*[2] and *Zandford*, 'the entirety of the fraud [did not] depend upon the tortfeasor convincing the victims of those fraudulent schemes to sell their covered securities in order for the fraud to be accomplished.'" App. 39a (footnote supplied).

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[2] *Superintendent of Insurance v. Bankers Life and Casualty Co.*, 404 U.S. 6 (1971).

The Fifth Circuit acknowledged that the claims against the Proskauer Defendants were different, because the plaintiffs did not allege that the Proskauer Defendants made any misrepresentations to them. App. 40a. Instead, the Proskauer Defendants allegedly aided and abetted the Stanford Ponzi scheme by making misrepresentations to the SEC and obstructing the SEC's investigation of the fraud. App. 41a. Because "these alleged misrepresentations were one level removed from the misrepresentations made by SIB or the SEI or Willis Defendants," they were even more tangential to the purchase or sale of covered securities and, therefore, not precluded by SLUSA. *Id.*

REASONS FOR DENYING THE PETITION

Contrary to the petitioners' claims, there is no outcome-determinative circuit conflict over the scope of the "in connection with" requirement under SLUSA. Instead, the various formulations employed by the courts of appeals are merely different ways of saying the same thing. But even if the variations were substantively different and could sometimes produce different outcomes, this case would not present an appropriate vehicle for resolving the conflict, because they would not produce different results here. And because the fraud alleged here was not in connection with the purchase or sale of covered securities, claims against aiders and abettors of that fraud who made no misrepresentations to the claimants, but only to regulators, are likewise not barred by SLUSA. The

petitions for a writ of certiorari should therefore be denied.

I. THIS CASE PRESENTS NO CERTWORTHY CIRCUIT CONFLICT REGARDING SLUSA'S "IN CONNECTION WITH" REQUIREMENT.

A. Although the Circuits Articulate the Standard Differently, There Is No Substantive Conflict Over the Standard for Applying SLUSA's "In Connection With" Requirement.

SLUSA does not preclude a class action unless a misrepresentation is made "in connection with the purchase or sale of a covered security." This Court in *Zandford* cautioned that the "in connection with" requirement "must not be construed so broadly as to convert every common law fraud that happens to involve securities into a violation of § 10(b)." 535 U.S. at 818. In *Dabit*, the Court explained that fraud that "coincides" with a purchase or sale of a covered security is "in connection with" the purchase or sale of the security and thus triggers SLUSA preclusion. 547 U.S. at 85.

After *Dabit*, circuit courts have used various formulations to describe when fraud "coincides" with a covered transaction. The Second Circuit has found the necessary connection when the fraud induced covered transactions and the claims "necessarily involve" and "necessarily rest" on them. *Romano*, 609 F.3d at 522. The Sixth Circuit has found the "coincide"

requirement satisfied where plaintiff's allegations "depend" upon transactions in covered securities. *Segal v. Fifth Third Bank, N.A.*, 581 F.3d 305, 310 (6th Cir. 2009). The Seventh Circuit has determined that the "coincide" requirement requires a plaintiff to allege fraud "involving" covered securities, noting that a simple "but for" relationship between an alleged fraud and the purchase or sale of such securities is insufficient. *Gavin v. AT&T Corp.*, 464 F.3d 634, 639 (7th Cir. 2006). The Eighth Circuit has concluded that "coincide" is less stringent than a standard requiring that defendant's non-disclosure "relate" to plaintiff's decision to purchase a covered security. *Siepel v. Bank of Am., N.A.*, 526 F.3d 1122, 1127 (8th Cir. 2008). The Ninth Circuit has required defendant's alleged misrepresentations and omissions to be "more than tangentially related" to plaintiff's purchase of covered securities. *Madden*, 576 F.3d at 966. And the Eleventh Circuit has found the "in connection with" requirement is satisfied when either defendant's fraud "induced" plaintiff to transact in covered securities or a fraudulent scheme "coincided and depended upon a purchase or sale of [covered] securities." *IPM*, 546 F.3d at 1349.

Although these tests use slightly different verbal formulations, each purports to describe the same "coincide" requirement set forth in *Dabit*. And each is conceptually very similar to the others: a fraud that "necessarily involves" or "necessarily rests" on a transaction in covered securities (the Second Circuit test) is very likely to "depend" on the transaction (the Sixth

and second-prong Eleventh Circuit test), to have induced the plaintiff to transact in the securities (the first-prong Eleventh Circuit test), to "involve" the securities in more than a but-for relationship (the Seventh Circuit test), and to be "more than tangentially related" to the transaction (the Fifth and Ninth Circuit test), and vice versa.[3] Even if it were possible to conceive of a case that would meet one but not another of the tests, to do so would merely highlight the imprecision of the formulations rather than identifying a genuine outcome-determinative difference among them.

If this Court is inclined to wade into the thicket of these minute semantic differentiations, it should do so only after it becomes clear that the circuits really mean different things by their respective articulations of the applicable standard. And it should do so only after the other circuits have had a chance to react to the Fifth Circuit opinion in this case, which explored the various formulations in more detail than prior opinions have done. As it stands, the supposed circuit conflict to which the petitioners point may be nothing more than an ephemeral variation in language,

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[3] This close similarity of the applicable tests puts to rest the petitioners' concern about forum-shopping. A lawyer or litigant attempting to choose a particular circuit in which to file a potentially SLUSA-precluded case would be hard-pressed to predict with any confidence which circuit would be most likely to allow the case to proceed.

unworthy of a scarce slot on this Court's submission docket.

B. If There Were More Than a Semantic Split, This Would Not Be the Case in Which to Resolve It: Regardless of Which Test Is Applied, the Connection Requirement Is Not Satisfied Here.

If the Court were to conclude that the difference among the circuits on the "in connection with" issue is more than semantic and therefore certworthy in the abstract, this would not be an appropriate case in which to resolve that difference. That is because SIB's sale of CDs was not "in connection with" the purchase or sale of covered securities under *any* of the tests. The nuances of the various formulations simply do not matter on the facts of the case, and resolution of any differences among them should await a case in which they do.

As an initial matter, this case fails to meet a universally-applied threshold requirement for SLUSA preemption. All of the tests employed by the courts of appeals require, at a minimum, a direct or indirect purchase or sale of covered securities, or a contract to do so.[4] But there was no direct or indirect purchase or

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[4] Because the 1933 and 1934 Acts define purchases and sales to include contracts to purchase or sell, *see* 15 U.S.C. §§ 77b(a)(3), 78c(a)(13)-(14), misrepresentations in connection with unconsummated contracts to purchase or sell covered securities fall within

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sale of, or contract to purchase or sell, a covered security in these actions. Thus, none of the tests would lead to preclusion here.

Moreover, as discussed in the sections that follow, application of the detailed circuit formulations to the facts of the case likewise demonstrates the lack of an outcome-determinative conflict on the facts of these cases.

1. The Standards Adopted by the Second, Sixth, and Eleventh Circuits Would Not Result in Preclusion Here.

a. The Eleventh Circuit has held the "in connection with" requirement satisfied when either (1) fraud induced the plaintiff to invest with the defendant or (2) the misrepresentation "coincided and depended upon the purchase or sale of [covered] securities." *IPM*, 546 F.3d at 1349. In *IPM*, plaintiff sued Merrill Lynch for vouching for a pension fund that promised to invest the claimants' money in covered securities, but instead embezzled them. Here, unlike in *IPM*, the plaintiffs do not allege that they were induced by fraud to invest with SIB on the promise that their money would be invested in covered securities. In particular, they do not allege: that SIB promised any investor that it was going to buy covered securities;

SLUSA. *Falkowski v. Imation Corp.*, 309 F.3d 1123, 1129 (9th Cir. 2002).

that any investor bought SIB CDs as a means of investing in any covered security; that any fraud occurred in connection with SIB's purchase of covered securities for its own account; that the investors expected to own any interest in SIB's investment portfolio; or that covered securities were collateral for the loans that the investors made to SIB with their deposits.

In short, the plaintiffs were not directly or indirectly buying an interest in the bank's covered securities. Instead, they were loaning money to a financial institution and relying on the strength of that financial institution to pay them back when the CDs matured (or on the bank's purported insurance if the bank were unable to pay). The plaintiffs parted with money intending that it be invested in private placement bank certificates of deposit, and it was. Facts bearing on the financial soundness of the issuing bank – that it did not make loans, that it invested in safe, secure, and liquid assets, and that it had unique insurance policies in place – do not convert the CDs into interests in the bank's investment portfolio.

Nor did the misrepresentations "coincide" with or "depend" on the purchase or sale of covered securities. The fraud was complete on the sale of the certificates of deposit by an insolvent bank engaged in a Ponzi scheme, and did not depend on the subsequent purchase or non-purchase of any covered securities. The fraudulent practices and the securities purchases were independent events. *Cf. Zandford*, 535 U.S. at 820-22 ("in connection with" requirement was satisfied

where "[t]he securities sales and respondent's fraudulent practices were not independent events"). Thus, under the Eleventh Circuit's rule, SLUSA preclusion would not apply in these cases.

b. The Second Circuit has adopted a formulation, similar to the Eleventh Circuit "depends upon" test, under which SLUSA's "in connection with" standard is met where "plaintiff's claims 'necessarily allege,' 'necessarily involve,' or 'rest on' the purchase or sale of securities. . . ." *Romano*, 609 F.3d at 522. Like the Eleventh Circuit rule, the Second Circuit's test would not call for preclusion here, because the alleged fraud did not "depend on," "necessarily involve," or "rest on" the purchase or sale of covered securities. The plaintiffs do not allege that they expected to own any interest in covered securities or that they expected to have any of the indicia of such ownership, including participating in appreciation or depreciation of covered securities, sharing in dividends, or having a preferential right to distribution of covered securities against other creditors of the bank. Here, in contrast to *Romano*, there is no allegation that plaintiffs expected investment returns from a portfolio investment that was never acquired; instead, plaintiffs' damages were caused by SIB's failure to honor its contractual obligations to redeem its (worthless) certificates of deposit. Thus, the Second Circuit's rule would not lead to SLUSA preclusion in these cases.

c. The petitioners point to a series of Madoff feeder-fund cases from district courts in the Second

Circuit. But in those cases, unlike the present cases, investors alleged that they intended to invest, directly or through one or more investment funds, in a purported portfolio of covered securities that Madoff never actually purchased on the investors' behalf. The initial funds were merely cursory pass-through vehicles. The courts concluded that the investors' complaints alleged misrepresentations "in connection with the purchase or sale of covered securities" because "the plaintiffs part[ed] with the money intending that it be invested in [covered] securities." *E.g.*, *In re J.P. Jeanneret Assoc. Inc.*, 769 F. Supp. 2d 340, 364 (S.D.N.Y. 2011).[5] Thus the Madoff feeder-fund cases

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[5] *See also In re Merkin*, 817 F. Supp. 2d 346, 360-61 (S.D.N.Y. 2011) ("Plaintiffs are alleged to have invested with the Funds. In turn, the Funds invested in Madoff, who then purported to make further securities transactions. This **pass-through investment** to Madoff 'coincided' with a securities transaction"; emphasis supplied); *In re Herald, Primeo & Thema Sec. Litig.*, No. 09 CIV 289 (RMB), 2011 U.S. Dist. LEXIS 137773, at *25 (S.D.N.Y. Nov. 29, 2011) ("Madoff's announced intention to purchase [covered] securities (i.e., stocks and options) for the benefit of Funds in which plaintiffs invested satisfies the requirement that Plaintiffs' claims against JPM and BNY, Madoff's bankers, were made 'in connection with the purchase or sale of a covered security' "); *In re Kingate Mgmt. Ltd. Litig.*, No. 09 CIV 5386 (DAB), 2011 U.S. Dist. LEXIS 41598, at *323 (S.D.N.Y. Mar. 30, 2011) (plaintiffs "allege that the Funds they purchased were essentially **transparent conduits** to [Madoff's investment firm] such that 'Plaintiffs' sole purpose in investing in the Funds was to invest in the United States and in United States equities that are part of the S&P 500' "; emphasis supplied); *In re J.P. Jeanneret Assocs., Inc.*, 769 F. Supp. 2d 340, 378 (S.D.N.Y. 2011) (interest in "feeder funds – funds that invested client assets with Bernard J. Madoff" – were covered securities under SLUSA); *Wolf Living*

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provide no support for SLUSA preclusion here, nor does the decision below carry any implications that the Madoff feeder-fund cases are not precluded.

d. Nor would this claim be precluded under the Sixth Circuit test, which is merely a slight permutation of the tests applied in the Second and Eleventh Circuits. The Sixth Circuit has held that SLUSA's "in connection with" requirement is satisfied by fraud allegations that "depend on" transactions in covered securities. *Segal v. Fifth Third Bank, N.A.*, 581 F.3d

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Trust v. FM Multi-Strategy Inv. Fund, LP, No. 09 CIV 1540 (LBF), 2010 U.S. Dist. LEXIS 118169, at *10 (S.D.N.Y. Nov. 2, 2010) (misrepresentations related to non-covered limited partnership interest "in connection with" covered securities where the funds were created for purpose of investing in Madoff funds); *Newman v. Family Mgmt. Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010) (although shares of fund were not covered securities, objective of fund was to purchase and sell covered securities including those in Madoff funds); *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 429 (S.D.N.Y. 2010) ("Although the shares of Beacon Fund are not covered securities, the objective of the fund was to manage Plaintiffs' investment using a strategy that inevitably included the purchase and sale of covered securities"); *Barron v. Igolnikov*, No. 09 CIV 4471 (TPG), 2010 U.S. Dist. LEXIS 2267, at *8-13 (S.D.N.Y. Mar. 10, 2010) (members of putative class purchased limited partnership interests in funds which in turn invested in Madoff covered securities), *appeal docketed*, No. 10-1387 (2d Cir. Apr. 14, 2010); *Backus v. Conn. Cmty. Bank, N.A.*, 789 F. Supp. 2d 292 (D. Conn. 2011) (plaintiffs pooled retirement funds in an investment account that "was essentially a **pass-through entity** for investment with [Madoff fund]"; emphasis supplied); *Levinson v. PSCC Serv., Inc.*, No. 3:09-CV-00269 (PCD), 2009 U.S. Dist. LEXIS 119957, at *23-40 (D. Conn. Dec. 23, 2009) (defendants placed plaintiffs' retirement proceeds into a collective fund that invested with Madoff).

305 (6th Cir. 2009). In that case, a bank breached its fiduciary duty to trust beneficiaries by investing trust assets in its own proprietary, registered mutual fund rather than in superior funds operated by its competitor. In *Segal*, the defendants were acting in a fiduciary capacity, buying covered securities for the benefit of plaintiff beneficiaries, not trading for themselves. In contrast, in this case, SIB was buying securities for its own account, not for the benefit of the plaintiffs. The fraud was complete when plaintiffs purchased their certificates of deposit and did not depend upon SIB's subsequent purchase, or non-purchase, of covered securities. Like the Second and Eleventh Circuit standards, the Sixth Circuit standard would not result in preclusion here.

2. The Standards Adopted by the Fifth and Ninth Circuits – SLUSA Precludes Fraud Claims When the Fraud is "More Than Tangentially Related" to a Securities Transaction – Would Not Result in Preclusion Here.

The Ninth Circuit has articulated a slightly different formulation of the requisite connection between the fraud alleged and the purchase or sale of securities, holding that fraud is "in connection with" the purchase or sale of securities "if there is a relationship in which the fraud and the stock sale coincide or are more than tangentially related." *Madden*, 576 F.3d at 966. Only if the alleged fraud is more than

"tangentially related" to a covered securities transaction will SLUSA preclusion apply. *Id.*

The Fifth Circuit believed the Ninth Circuit's test to be the best articulation of the "coincide" requirement. In the court's view, the tangentially-related standard "nicely deals" with the "tension" between construing the requirement "so broadly as to [encompass] every common law fraud that happens to involve [covered] securities" while at the same time taking the "connection" requirement seriously. App. 32a. "Accordingly, if [the plaintiff's] allegations regarding the fraud are more than tangentially related to (real or purported) transactions in covered securities, then they are properly removable and also precluded." App. 33a.

The Fifth Circuit correctly applied this standard in the cases at hand, holding that the plaintiffs' claims were not precluded because the fraud allegations were not "more than tangentially related" to a covered-security transaction. The court correctly concluded that references to SIB's portfolio's being backed by "covered securities" were merely tangentially related to the "heart," "crux," or "gravamen" of the defendants' fraud. Comparing the allegations here to those in the Madoff feeder-fund cases, the court concluded that the CDs, like the uncovered hedge funds in *Montreal Pension*, were not mere "ghost entities" or "cursory pass-through vehicles" to invest in covered securities. App. 37a. Instead, they were debt assets that promised a fixed rate of return not tied to the success of any of SIB's purported investments in the

"highly marketable securities issued by stable national governments, strong multinational companies and major international banks." *Id.* There was thus no SLUSA preclusion under the Fifth/Ninth Circuit test.

II. THE DECISION BELOW WAS CORRECT.

A. The Fifth Circuit's Decision Is Innocent of the Flaws the Petitioners Allege.

The Willis petitioners mischaracterize the Fifth Circuit's opinion as "limiting SLUSA preclusion to complaints that *predominantly* allege misrepresentations in connection with transactions in covered securities," claiming that under such a rule, adding extraneous allegations "allows a plaintiff to escape SLUSA." Willis Petition at 21 (emphasis in original). But it was not solely the presence of allegations of fraud not involving covered securities that led the Fifth Circuit to conclude that the fraud was only tangentially related to transactions in covered securities. Instead, the court also relied on the fact that the only allegation that could possibly implicate SLUSA – that SIB represented that it had an investment portfolio that included highly liquid, marketable securities (not that SIB would invest the proceeds of the plaintiffs' CDs in such securities or that the plaintiffs themselves would have any interest whatsoever in that portfolio) – was itself only tangentially related to the fraudulent scheme.

Nor was the Fifth Circuit fooled by "artful pleading." The court regarded the nature of the securities

sold to the plaintiffs, not the state of the plaintiffs' pleadings, as determinative. Those securities were debt instruments, not equity investments in covered securities or in a pass-through vehicle that in turn invested in covered securities. Stanford's misrepresentations that SIB's portfolio was invested in highly liquid, marketable, and secure assets do not transform fraud in the purchase and sale of the CDs into fraud in connection with the purchase or sale of a covered security. Indeed, to construe SLUSA that broadly would preclude *any* common-law fraud claim (whether relating to securities, or real estate, or a business transaction, or otherwise) against any entity that bolstered its claims of financial stability by pointing to its own portfolio of covered securities. The Fifth Circuit was correct in concluding that Congress did not intend SLUSA (and, concomitantly, § 10(b) and Rule 10b-5)[6] to stretch so far.

The petitioners' arguments are premised on the false assumption that "Stanford Financial . . . made a false promise to purchase covered securities, for the

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[6] The Court will recall that the phrase "in connection with the purchase or sale" in SLUSA is construed *in pari materia* with the same phrase in § 10(b) of the 1934 Act [15 U.S.C. § 78(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5]. *Dabit*, 547 U.S. at 85-86. An overexpansive reading of the phrase as used in SLUSA would lead inexorably to an overexpansive reading of the phrase as used in § 10(b) and Rule 10b-5. In particular, adopting the petitioners' construction of the phrase would construe it "so broadly as to convert every common-law fraud that happens to involve securities into a violation of § 10(b)," as warned against in *Zandford*, 535 U.S. at 820.

specific purpose of inducing plaintiffs' continued investment and thereby facilitating the entire fraudulent scheme." Chadbourne Petition at 26. The plaintiffs alleged no such promise, but instead alleged misrepresentations by SIB that its existing portfolio already consisted of highly liquid marketable securities.

But even if SIB had made a promise of future purchases as the petitioners claim, a false promise that SIB would invest in covered securities for its own account would not suffice to satisfy the "in connection with" requirement. SLUSA would not apply in that situation because the purported buyer (SIB) would not be deceived in connection with the purported transactions in covered securities. There was, in short, no deception in any covered securities transaction, and the deception of the plaintiffs in their non-covered securities transaction bore, as the Fifth Circuit recognized, only a highly attenuated connection to the covered transactions.

The Proskauer petitioners contend that the Fifth Circuit decision is incorrect because the decision below found that "covered securities were in fact traded as a part of the fraud." Proskauer Petition at 19, *quoting* App. 38a. But they take that statement out of context: it appeared in the circuit court's discussion of the district court's second rationale for SLUSA preclusion, namely, that at least one of the plaintiffs must have sold SLUSA-covered securities to buy CDs. No court of appeals has applied its SLUSA preclusion standard to embrace the district court's "upstream"

rationale, and indeed none of the petitioners advocates it in this Court.[7] The Fifth Circuit's statement in the "upstream" context thus serves as no basis for a claim that the court misapplied *Dabit* by failing to apply SLUSA to a (non-existent) deceptive "downstream" sale of covered securities.

B. The Fifth Circuit's Decision Comports with the Intent and Purpose of SLUSA and the PSLRA.

The Fifth Circuit's approach is consistent with Congressional intent. SLUSA was passed to establish national standards for securities class action lawsuits involving nationally-traded securities. At the same time, Congress recognized the importance of "preserving the appropriate enforcement powers of state regulators, and the rights of individuals to bring suit." S. Rep. No. 105-182, at 8 (1992). Thus, while

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[7] As the Fifth Circuit correctly concluded, "the fact that some of the plaintiffs sold some 'covered securities' to buy CDs" was not more than tangentially related to the fraudulent scheme and, accordingly, provides no basis for SLUSA preclusion. App. 40a. The court distinguished *Superintendent of Insurance v. Bankers Life and Casualty Co.*, 404 U.S. 6 (1971), and *Zandford* because in those cases "the entirety of the fraud depended upon the tortfeasor convincing victims of those fraudulent schemes to sell their covered securities in order for the fraud to be accomplished." App. 39a. Here, the focus of the fraud was the fraudulent sale of SIB's certificates of deposit, not the sale of whatever assets were sold to buy the certificates of deposit; the source of the funds was immaterial both to Stanford's scheme and to the harm suffered by the plaintiffs.

SLUSA precludes securities class actions based on state law alleging misrepresentations in connection with the purchase or sale of securities listed on a national exchange, it leaves the states free to police fraud not involving nationally-traded securities.

Had Congress intended to preclude all state-law securities fraud actions or fiduciary fraud actions involving securities, there would have been no need to explicitly require a connection to the purchase or sale of a nationally-traded security. Given Congress's express decision to exclude from "covered securities" those not traded on a national exchange, federal courts should be wary of foreclosing common law breach-of-fiduciary-duty actions or state law aiding-and-abetting actions that supplement existing federal statutes. *E.g.*, *Gochauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir. 1987).

Moreover, expanding the scope of SLUSA to reach secondary transactions by issuers, downstream of purported purchasers of uncovered securities, does not further the purposes of SLUSA or the PSLRA to prevent frivolous strike suits against issuers of nationally-traded securities and to avoid discouraging forward-looking statements of such issuers. Issuers of *covered* securities are not exposed to meritless strike suits, or chilled from making forward-looking statements, when defrauded investors pursue claims against those who commit fraud in the sale of *uncovered* securities, regardless of whether some secondary transaction happens to involve covered securities.

SLUSA's reach simply does not extend to cases where the fraudulently-induced investments are not themselves covered securities, nor investment vehicles that actually or purportedly invested in covered securities. Here, the alleged fraud – the false representations that SIB certificates of deposit were as safe as FDIC-insured bank certificates of deposit because SIB had unique insurance policies in place, and because SIB invested in safe, secure, and liquid assets – has nothing to do with the integrity of a United States stock exchange, with forward-looking statements made by issuers of covered securities, or with any other concern of the PSLRA. Accordingly, the circuit court was correct in honoring Congress's express and intentional exemption of non-national securities from SLUSA preclusion.

III. THE COURT BELOW CORRECTLY CONCLUDED THAT THE AIDERS' AND ABETTORS' MISREPRESENTATIONS WERE EVEN FURTHER REMOVED FROM A COVERED TRANSACTION THAN THE PRIMARY MISREPRESENTATIONS.

A. There Is No Circuit Conflict Regarding SLUSA Preclusion of Aiding-and-Abetting Claims.

The Proskauer Defendants argued below that their alleged misrepresentations to regulators were "in connection with" the sale of covered securities because those representations "allowed SIB to recruit the Willis Defendants to sell CDs, who in turn

misrepresented to the *Troice* Plaintiffs a host of things in order to convince them that the CDs were good investments, including vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities." App. 41a. The Fifth Circuit held that this was an insufficient connection to trigger SLUSA preclusion. In its view, "[t]hese alleged misrepresentations were one level removed from the misrepresentations made by SIB or the SEI and Willis Defendants." *Id.* The court therefore concluded that, "[l]ike with the SEI and Willis Defendants, the misrepresentations made by the Proskauer Defendants are not more than tangentially related to the purchase or sale of covered securities and therefore, SLUSA preclusion does not apply." *Id.*

There is nothing in that holding that conflicts with the law in any other circuit. In the Eleventh Circuit, if, as here, the court had concluded that the fraudulent misrepresentations by PFA were not SLUSA-precluded, then the claims against Merrill Lynch for aiding and abetting those misrepresentations likewise would not have been precluded. So, too, in *Proctor v. Vishay Intertechnology, Inc.*, 584 F.3d 1208 (9th Cir. 2009), because the underlying fraud was in connection with the purchase or sale of the covered securities and, hence, precluded by SLUSA, the aiding-and-abetting claim was precluded as well. The result would be the same in the Fifth Circuit as in every other circuit.

B. The Fifth Circuit Correctly Held That Where a Primary Misrepresentation Is Not SLUSA-Precluded, Claims for Aiding and Abetting That Misrepresentation Are Not Precluded.

The Fifth Circuit's aiding-and-abetting holding was straightforward – that the misrepresentations allegedly made by the Proskauer Defendants were even more removed from a covered securities transaction than those of SIB and the SEI and Willis Defendants, and were therefore not SLUSA-precluded. App. 41a.

The court did *not* hold, as petitioner Chadbourne alleges, that "SLUSA preclusion does not apply *even if* the underlying fraud is SLUSA-covered, because the defendant's own statements are not 'in connection with' a [covered] securities transaction." *Cf.* Chadbourne Petition at 29-30 (emphasis in original). It instead analyzed the content and circumstances of the Proskauer Defendants' misrepresentations to assure itself that those defendants' acts of aiding and abetting did not themselves trigger SLUSA preclusion, by constituting misrepresentations in connection with a covered transaction.

The Fifth Circuit's actual aiding-and-abetting holding in this case – that non-precluded misrepresentations that aid and abet other non-precluded misrepresentations are not SLUSA-precluded – is unremarkable and indeed almost tautological. The question of whether SLUSA precludes aiding-and-abetting

claims where the primary actor's misrepresentations, or the aider-and-abettor's misrepresentations, or both, are in connection with a covered transaction will have to await a case in which it is presented.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be denied.

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August 20, 2012

REPLY BRIEF

Supreme Court, U.S.
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NO. 12-86

In the Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; and SEI INVESTMENTS COMPANY

Petitioners,

v.

SAMUEL TROICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF FOR PETITIONERS

The *Troice* Respondents concede that the courts of appeals employ different tests in applying SLUSA's "in connection with" requirement, but contend that any difference is merely semantic and has no effect on the ultimate outcome of this or other cases. That contention is squarely refuted by the decisions below. The district court applied the Eleventh Circuit's test and found Respondents' claims to be precluded because Respondents were "induced" to purchase SIB CDs based on misrepresentations about SLUSA-covered securities. The Fifth Circuit rejected the Eleventh Circuit's "induced or depended" test (and the Second Circuit's similar test), applied its own variant of the Ninth Circuit's standard, and concluded that Respondents' claims were not barred because the alleged fraud was too far removed from a covered securities transaction. The choice of legal standard is indisputably outcome determinative.

The *Troice* Respondents claim that the misrepresentations regarding covered securities were so "tangential" to the fraudulent scheme that they would not be precluded in any circuit. That claim is directly refuted by their own complaints. The misrepresentations at the heart of the Stanford Ponzi scheme—which Respondents themselves describe as "material" misrepresentations—were the false statements that the CDs issued by Stanford International Bank ("SIB") were backed by safe, liquid, publicly traded securities. As the district court found, the CDs were the mechanism for delivering investors above-market returns from those publicly traded securities. Without the

misrepresentations regarding SLUSA-covered securities, the entire scheme of getting investors to purchase SIB CDs never could have succeeded.

Moreover, Respondents have no response to Petitioners' argument that the Fifth Circuit's decision will directly undermine one of the core policy goals underlying SLUSA, the PSLRA, and this Court's securities law jurisprudence: preventing the plaintiffs bar from using state-law claims to evade restrictions on federal securities claims. Rather, Respondents affirmatively embrace the notion that aiders and abettors are further removed from covered securities and should thus fall outside the scope of SLUSA. That argument, if accepted, would allow wholesale evasion of this Court's decisions limiting private securities claims against third-party actors.

The *Roland* and *Farr* Respondents do not address the merits of the Petition, and instead rely entirely on a deeply flawed jurisdictional objection. They contend that there is no jurisdiction because the Fifth Circuit remanded their cases to the Louisiana state courts. But while it is true that the courts of appeals lack jurisdiction in most circumstances to review a *district court* order remanding a case to state court, it is equally well-established that this Court has jurisdiction to review a court of appeals decision reversing a district court order that declined to remand. *See Gay v. Ruff*, 292 U.S. 25, 30 (1934) (this Court may, pursuant to its certiorari jurisdiction, "review the action of the circuit court of appeals in directing the remand of a cause to the state court"). The latter situation is involved here,

and there is absolutely no jurisdictional obstacle to this Court's review.

I. THE ACKNOWLEDGED CIRCUIT SPLIT OVER THE MEANING OF SLUSA'S "IN CONNECTION WITH" REQUIREMENT WARRANTS THIS COURT'S REVIEW

A. There is a Bona Fide Split of Authority That is Demonstrably Outcome-Determinative Here

The *Troice* Respondents attempt to dismiss (at 13-21) the circuits' different formulations of the "in connection with" requirement as "minute semantic differentiations" that are not outcome-determinative. That argument is plainly wrong. Respondents ignore the fact that both the district court and the Fifth Circuit found the different formulations of the "in connection with" requirement to be dispositive. Indeed, what is so compelling about this case as a vehicle is that the difference among the circuits was demonstrably outcome-determinative: the district court applied the Eleventh Circuit's test to find Respondents' claims precluded, while the Fifth Circuit adopted a variant of the Ninth Circuit's test to reverse.

In the absence of "controlling Fifth Circuit authority," the district court surveyed the relevant case law and found a "mélange of opinions" about the meaning of SLUSA's "in connection with requirement." Pet.App.65. The court chose to follow the Eleventh Circuit's "more exacting" standard, which asks whether the plaintiffs' claims are premised on either: (1) fraud that "induced" the plaintiffs to invest with the defendants; or (2) a

fraudulent scheme that "coincided and depended upon" the purchase or sale of SLUSA-covered securities. Pet.App.65 (citing *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1349 (11th Cir. 2008) ("*IPM*")). The district court found that standard to be satisfied here because Respondents' purchases of SIB CDs were "induced" by misrepresentations that SIB was investing the CD assets in a portfolio of SLUSA-covered securities. Pet.App.66-67.

The Fifth Circuit, in contrast, expressly rejected the Eleventh Circuit's standard (and the Second Circuit's similar test), and concluded that the Ninth Circuit's test was the "best articulation" of the standard. Pet.App.31-33. Purporting to apply the Ninth Circuit's "more than tangentially related" standard, but actually applying an even more plaintiff-friendly version of that test, the Fifth Circuit held that SLUSA does not apply because Petitioners' alleged misrepresentations were only "tangentially" related to covered securities transactions. Pet.App.36-38.

Because the district court found that Respondents' claims would be barred by SLUSA under the Second and Eleventh Circuits' tests, Respondents try to distinguish the cases from those circuits. The *Troice* Respondents contend (at 16-17) that the leading Eleventh Circuit case, *IPM*, 546 F.3d 1349, can be distinguished on the ground that SIB did not *promise* purchasers of the CDs that it would invest their deposits in covered securities. That contention is squarely refuted by Respondents' own complaint, which alleges that SIB made a "material misstatement" that the CD funds would be

placed in "safe, liquid investments," including "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity, and credibility)."[1] Even the Fifth Circuit acknowledged that these misrepresentations were intended to "lure" (*i.e.*, induce) Respondents into "buying the worthless CDs." Pet.App.36-37; *see also* Pet.App.66 (SIB represented that the CDs were "backed, at least in part, by SIB's investments in SLUSA-covered securities").

Respondents also fail to distinguish the relevant Second Circuit cases. The Second Circuit's test asks whether the complaint "necessarily" alleges, involves, or rests on misrepresentations regarding SLUSA-covered securities. *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010). Respondents' claims would clearly be barred under this standard, as they are quite similar to claims against third parties arising out of the Bernard Madoff Ponzi scheme that district courts within the Second Circuit have repeatedly found to be precluded by SLUSA. *See* Pet. 27-28.

Respondents argue (at 18-20) that these cases are inapposite because the Madoff investment funds were merely "cursory pass-through vehicles" or "conduits" for the purchase of SLUSA-covered securities. But that is a distinction without a difference. The CDs were the "conduit" through which investors sought to obtain Stanford's above-

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[1] Third Amended Class Action Complaint at ¶ 180 & Ex.2, *Troice v. Willis of Colorado*, No. 3:09-cv-1274-L (N.D. Tex. Apr. 1, 2011) ("Willis/BMB Complaint").

market returns. As Respondents readily admit, SIB induced investors to purchase its CDs by making materially false representations that the CDs were backed by SLUSA-covered securities, such as "first grade investment bonds" and "shares of stock (of great reputation, liquidity, and credibility)." Willis/BMB Complaint ¶ 180 & Ex.2. The combination of above-market returns and safe, liquid securities was the key to the inducement. Bernard Madoff similarly represented to his investors that he would "purchase [covered] securities (i.e., stocks and options) for the benefit of Funds in which plaintiffs invested." *In re Herald, Primeo & Thelma Sec. Litig.*, 2011 WL 5928952, at *8 (S.D.N.Y. Nov. 29, 2011). Both Stanford and Madoff "purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67-68 n.12. There is thus little doubt that Respondents' claims would have been precluded under the reasoning of the Madoff-related cases applying the Second Circuit's test.

B. It is Irrelevant That the CDs Were Not Covered Securities and That SIB Did Not Actually Purchase or Sell Securities

The *Troice* Respondents raise two related arguments about why Petitioners purportedly cannot prevail under any standard. They emphasize (at 15-16, 28) that the SIB CDs are not *themselves* SLUSA-covered securities, and that SIB did not actually purchase or sell covered securities despite its misrepresentations to the contrary.

Both arguments are wholly without merit. Indeed, that is the one point on which the district

court and the Fifth Circuit agreed. As the district court explained, the fact that the SIB CDs are not themselves covered securities "is not the end of the story" because "SLUSA [does] not require actual dealing in ascertainable securities." Pet.App.62-63. The Fifth Circuit agreed, holding, "in accord with the district court," that the fact that "the CDs were uncovered securities [ ] does not end our inquiry." Pet.App.36. Many other courts have reached the same conclusion. *See Newman v. Family Mgmt. Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010) ("[M]isrepresentations related to non-covered limited partnership interests may be nonetheless 'in connection with' covered securities where the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud'").

Respondents are equally wrong to suggest (at 15-16) that SLUSA is categorically inapplicable unless there has been an *actual* purchase or sale of covered securities. An investment scheme purportedly backed by real securities transactions does not somehow fall outside of SLUSA because, in fact, it was a complete fraud and no securities transactions occurred. The absence of the promised transactions ensures there were misrepresentations, but does not render the misrepresentations any less "in connection with" covered securities. It is no accident that Respondents cite no authority in support of this argument, as all relevant case law is to the contrary. *See Grippo v. Perazzo*, 357 F.3d 1218, 1223 (11th Cir. 2004) (alleged fraud was "in connection with" a securities transaction even though "no proof exist[ed] that a security was actually bought or sold"); *Scala*

v. Citicorp, 2011 WL 900297, at *7 (N.D. Cal. Mar. 15, 2011) (finding it "inconsequential" that "some or even all of the securities transactions may never have occurred"); *Horattas v. Citigroup*, 532 F. Supp. 2d 891, 901-03 (W.D. Mich. 2007).

C. The Fifth Circuit's Decision Was Wrong on the Merits

While there will be ample opportunity to debate the merits of the Fifth Circuit's test if certiorari is granted, the *Troice* Respondents' defense of the Fifth Circuit's reasoning is wholly unavailing. Respondents argue (at 23) that the "only allegation that could possibly implicate SLUSA"—the misrepresentations that the CDs were backed by SLUSA-covered securities—was "only tangentially related to the fraudulent scheme."

To the contrary, the false statements that the SIB CDs were backed by safe, liquid, publicly traded securities (*i.e.*, SLUSA-covered securities), were at the very core of the Stanford Ponzi scheme. *See* Willis/BMB Complaint ¶ 180 & Ex. 2; SEI Complaint ¶ 20. The SIB CDs were the vehicle to obtain the promised above-market returns, and the (mis)representations that those CDs not only delivered above-market returns but were backed with safe securities were critical to inducing investors into a seemingly ideal high-return, low-risk investment. Indeed, Respondents themselves described these as "material" misstatements. Willis/BMB Complaint ¶ 180. Absent such misrepresentations, Respondents and other investors would not have bought into the scheme. *See* Pet.App.67 ("[i]f Plaintiffs had been aware of the

truth, Plaintiffs would not have purchased the SIB CDs").[2]

Finally, the *Troice* Respondents weakly attempt to bolster the Fifth Circuit's reasoning by contending (at 26-27) that applying SLUSA to their complaint would "not further" the statute's purpose of preventing "strike suits" against issuers of publicly traded securities. But preventing strike suits is only one of the many purposes underlying SLUSA, the PSLRA, and this Court's securities law jurisprudence. The *primary* purpose of SLUSA is to prevent the plaintiffs bar from using "State private securities class action lawsuits" to "frustrate the objectives" of the PSLRA. *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 82, 86 (2006) (citations omitted).

That is exactly what has happened here, as Respondents' counsel has boasted. *See* Pet. 31-32. If brought under federal law, Respondents' claims would have been subject to the PSLRA's heightened pleading requirements, and their efforts to target secondary actors would have been barred by this Court's decisions in *Stoneridge* and *Central Bank*. Respondents thus intentionally chose to limit their

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[2] Respondents make the extravagant claim (at 24) that a ruling in Petitioners' favor would preclude common-law fraud claims involving ordinary business transactions against any defendant that "bolstered its claims of financial stability by pointing to its own portfolio of covered securities." Not so. In those circumstances, the *misrepresentations* would have nothing to do with SLUSA-covered securities, and thus would not satisfy the Second or Eleventh Circuits' tests.

complaint to state-law claims in order to "get around" those requirements. *Id.* Indeed, Respondents affirmatively embrace the notion that secondary actors are further removed from the securities transaction and thus should fall outside SLUSA. Pet. 29-31. An analogous argument was made of "holder" claims in *Dabit*, but this Court rejected that argument there and should do likewise here.

II. THIS COURT HAS JURISDICTION OVER THE *ROLAND* AND *FARR* CASES

The *Roland* and *Farr* Respondents do not address the merits of the Petition at all. Instead, they rest on a profoundly mistaken jurisdictional argument. They contend that this Court lacks jurisdiction over the *Roland* and *Farr* cases—in which only Petitioner SEI Investments Company is a defendant—because the Fifth Circuit held that the claims against SEI must be remanded to Louisiana state court. That argument wholly ignores contrary precedent.

To be sure, "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." 28 U.S.C. § 1447(d). And *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (2006), held that courts of appeals lack jurisdiction under § 1447(d) to review district court orders remanding to state court cases that had been removed under SLUSA. *Kircher* was consistent with earlier decisions holding that "[a]n order *of a District Court* remanding a cause to the state court from whence it came is not appealable, and hence may not be reviewed either in the Circuit Court of Appeals or

here." *Aetna Casualty & Surety Co. v. Flowers*, 330 U.S. 464, 466-67 (1947) (emphasis added).

But that is simply not the posture of this case. Here, the district court did not issue an order remanding the *Roland* and *Farr* cases to state court. To the contrary, it *exercised* subject matter jurisdiction and dismissed Respondents' claims pursuant to SLUSA. Pet.App.74-75. That order was clearly appealable; indeed, it was Respondents who filed the appeal.[3] The Fifth Circuit ultimately reversed that decision and remanded with instructions to remand to state court. Petitioners seek this Court's review of the Fifth Circuit's decision, not any action of the district court. It is well-established that this Court has jurisdiction over an appellate decision reviewing a district court ruling dismissing a case and declining to remand, whether the appellate court affirms or reverses. *See Aetna*, 330 U.S. at 467 (this Court has "authority to

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[3] Because the district court order dismissing the case was appealable, this Court had jurisdiction once Respondents filed their appeal and the case was "in the court of appeals." *Hertz v. Friend*, 130 S. Ct. 1181, 1187 (2010) (28 U.S.C. § 1254 "gives this Court jurisdiction to 'review . . . [b]y writ of certiorari' cases that . . . are,'in the courts of appeals' when we grant the writ"). That distinguishes this case from *Kircher* and analogous cases where the remand order is not appealable and the case was never properly in the court of appeals. Once this case was "in the court of appeals" subsequent events did not deprive this Court of jurisdiction and it would make no sense to suggest that this Court would have had jurisdiction over a petition for certiorari before judgment, but somehow does not have jurisdiction to review the decision and judgment of the Fifth Circuit.

review an action of the Circuit Court of Appeals, directing a remand to a state court").

The Court has reaffirmed this rule several times. In *Gay*, the Court held that, by reason of its "extensive power to issue writs of certiorari," the Court may "review the action [of] the circuit court of appeals in directing the remand of a cause to the state court." 292 U.S. at 30.[4] That is, under "the general statute controlling review on certiorari," this Court may "review a decision of a Circuit Court of Appeals directing a District Court to remand a cause to state court." *Employers Reinsurance Corp. v. Bryant*, 299 U.S. 374, 379 n.9 (1937). The rule limiting appellate review of remand orders "is limited to remanding orders made by the District [] Courts," *id.*—orders that were *never* appealable or "in the courts of appeals"—and does not affect in any way this Court's authority to review a decision of the court of appeals pursuant to its certiorari jurisdiction.[5]

The *Roland* and *Farr* Respondents assert (at 2, 6, 9) that the case is immune from review because the Fifth Circuit's mandate has issued and the district court subsequently acted on that mandate. To the contrary, the "fact that the mandate of the Circuit Court of Appeals has issued" does not "defeat this

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[4] The statute at issue in *Gay*, 28 U.S.C. § 71, contained language similar to 28 U.S.C. § 1447(d).

[5] The lower court cases cited by Respondents (at 8) involved appellate review of district court remand orders and are thus inapposite.

Court's jurisdiction" to review a court of appeals decision ordering that a case be remanded. *Aetna*, 330 U.S. at 467. This Court recently granted certiorari and reversed a Fourth Circuit decision that had "instructed the District Court to remand the case to state court." *Lincoln Property v. Roche*, 546 U.S. 81, 87-88 (2005).

Because the *Roland* and *Farr* Respondents' jurisdictional arguments lack merit, the Court should deny their request for attorneys' fees and costs pursuant to Rule 42.2.

CONCLUSION

The Court should grant the petition.

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September 4, 2012

AMICUS CURIAE BRIEF

RECEIVED
AND
BRIEFS

Nos. 12-79, 12-86 and 12-88

In the Supreme Court of the United States

CHADBOURNE & PARKE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

WILLIS OF COLORADO INCORPORATED, ET AL., PETITIONERS

v.

SAMUEL TROICE, ET AL.

PROSKAUER ROSE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

The Securities Litigation Uniform Standards Act (SLUSA) precludes most state-law class actions in which the plaintiffs allege misrepresentations "in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A). The term "covered security" encompasses, *inter alia*, securities listed on a regulated national exchange. See 15 U.S.C. 77r(b) (2006 & Supp. V 2011), as amended by Pub. L. No. 112-106, §§ 305(a), 401(b), 126 Stat. 322, 325; 15 U.S.C. 78bb(f)(5)(E). The questions presented are as follows:

1. Whether SLUSA precludes a class action alleging that plaintiffs purchased uncovered securities in reliance on misrepresentations that those securities were backed by investments in covered securities.

2. Whether the court of appeals correctly held that SLUSA does not preclude respondents' claims against persons who are alleged to have aided and abetted the primary violators.

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In the Supreme Court of the United States

No. 12-79

CHADBOURNE & PARKE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

No. 12-86

WILLIS OF COLORADO INCORPORATED, ET AL., PETITIONERS

v.

SAMUEL TROICE, ET AL.

No. 12-88

PROSKAUER ROSE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of

the United States. In the view of the United States, the petitions should be denied.

STATEMENT

1. Section 10(b) of the Securities Exchange Act of 1934 (1934 Act) makes it unlawful to "use or employ, in connection with the purchase or sale of any security * * *, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe." 15 U.S.C. 78j(b). The Securities and Exchange Commission (SEC or Commission) issued Rule 10b-5 to implement Section 10(b). Rule 10b-5 declares it unlawful, "in connection with the purchase or sale of any security," to "employ any device, scheme, or artifice to defraud"; to "make any untrue statement of a material fact or * * * omit to state a material fact necessary in order to make the statements made * * * not misleading"; or to "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. 240.10b-5.

The Commission may bring a civil enforcement action against "any person" who has "violated any provision of [the 1934 Act]" or "the rules or regulations thereunder." 15 U.S.C. 78u(d)(3)(A); see 15 U.S.C. 78u(d)(1) (authorizing Commission actions for prospective injunctive relief whenever a person is "about to engage" in a violation). The United States may bring criminal prosecutions for willful violations. 15 U.S.C. 78ff(a). Section 10(b) has also been construed to afford an implied right of action to private parties, although this Court has placed various limitations on such private lawsuits. See, *e.g.*, *Central Bank* v. *First Interstate Bank*, 511 U.S. 164, 191 (1994); *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 725, 754-755 (1975).

Prompted by concern that the salutary purposes of private securities litigation were being "undermined by * * * abusive and meritless suits," H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. 31 (1995), Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737. The PSLRA established numerous reforms—including heightened pleading standards, an automatic stay of discovery, and a safe harbor for forward-looking statements—that apply to securities-fraud actions brought under federal law. See 15 U.S.C. 78u-4(b) (2006 & Supp. V 2011); 15 U.S.C. 78u-5.

After the PSLRA was enacted, however, Congress observed a sharp increase in the number of securities-related class actions that alleged only state-law claims. In response to that development, Congress enacted the Securities Litigation Uniform Standards Act (SLUSA), Pub. L. No. 105-353, 112 Stat. 3227. SLUSA reflects Congress's view that the growing prevalence of state-law securities-fraud class actions had "prevented [the PSLRA] from fully achieving its objectives" of "prevent[ing] abuses in private securities fraud lawsuits." SLUSA § 2(1)-(3), 112 Stat. 3227; see *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71, 82 (2006). Congress therefore found it "appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators." SLUSA § 2(5), 112 Stat. 3227.

To that end, Congress directed that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging" either "a misrepresentation or omission of a mate-

rial fact in connection with the purchase or sale of a covered security" or "any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1); see 15 U.S.C. 77p(b).[1] A covered class action is one in which damages are sought on behalf of more than 50 people. 15 U.S.C. 78bb(f)(5)(B)(ii). A covered security includes one that was listed on a regulated national exchange and traded nationally "at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred." 15 U.S.C. 78bb(f)(5)(E); see 15 U.S.C. 77r(b) (2006 & Supp. V 2011), as amended by Pub. L. No. 112-106, §§ 305(a), 401(b), 126 Stat. 322, 325.

SLUSA's "preclusion provision" does not bar state-law claims entirely. *Kircher* v. *Putnam Funds Trust*, 547 U.S. 633, 637 n.1 (2006). Rather, it makes certain "claims nonactionable through the class-action device in federal as well as state court." *Ibid.* If a suit that falls within the scope of the preclusion provision is brought in state court, the action is "removable to the Federal district court for the district in which the action is pending," 15 U.S.C. 78bb(f)(2), where it is subject to dismissal.

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[1] SLUSA includes several exceptions to preclusion, none of which is relevant here. See 15 U.S.C. 78bb(f)(3) (exempting from preclusion a "covered class action * * * based upon the statutory or common law of the State in which the issuer is incorporated * * * or organized"; an action brought by a "class comprised solely of * * * States, political subdivisions, or State pension plans"; and an otherwise "covered class action" if it "seeks to enforce a contractual agreement between an issuer and an indenture trustee").

2. a. This case arises from a multi-billion-dollar Ponzi scheme run by Allen Stanford and various entities that he controlled. Among those entities was Antigua-based Stanford International Bank (SIB), which issued fixed-return certificates of deposit (CDs) that SIB falsely claimed were backed by safe, liquid investments. See Pet. App. 6a-7a, 37a.[2] In fact, the claimed investments did not exist, and "SIB had to use new CD sales proceeds to make interest and redemption payments on pre-existing CDs." *Id.* at 6a (quoting *Janvey* v. *Alguire*, 647 F.3d 585, 590 (5th Cir. 2011)).

Multiple suits were filed after the fraud was discovered. Two groups of Louisiana investors filed suits in state court in Baton Rouge against a number of Stanford companies and employees (the SEI Defendants), claiming violations of Louisiana law. Pet. App. 7a. A different group of investors brought separate class actions in federal court against SIB's insurance brokers (the Willis Defendants) and SIB's lawyers (the Proskauer Defendants), claiming violations of Texas law. *Id.* at 9a.[3] The complaints alleged that the SEI Defendants and the Willis Defendants had falsely told the plaintiffs that the CDs were a good investment because (*inter alia*) SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." *Id.* at

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[2] All citations to "Pet. App." are to the appendix to the petition for a writ of certiorari in No. 12-79.

[3] In addition, the SEC brought an action alleging fraud with respect to the CDs (which are "securities" within the meaning of Section 10(b), though not "covered securities" within the meaning of SLUSA), and the United States prosecuted Stanford for fraud, conspiracy, and obstruction of justice. See Pet. App. 6a-7a.

8a; see *id.* at 9a. The Proskauer Defendants were alleged to have engaged in civil conspiracy and to have aided and abetted the primary violations, but they were not alleged to have made any misrepresentations directly to the plaintiffs. *Id.* at 9a.

The SEI defendants removed the Louisiana cases to federal court, and all of the actions were ultimately transferred to the Northern District of Texas. The district court dismissed the complaints as precluded under SLUSA. The court held that the CDs themselves are not "covered securities," see Pet. App. 60a-61a, but that the plaintiffs had nevertheless alleged misrepresentations "made in connection with transactions in covered securities," *id.* at 63a.[4]

The district court based that holding on two independent grounds. First, the court focused on the allegation that respondents had bought CDs due to the false representation that SIB invested its assets in "highly marketable securities issued by stable governments, strong multinational companies and major international banks." Pet. App. 64a. The court found that SIB had "led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities." *Id.* at 64a-65a; see *id.* at 65a n.11 (noting "the prevalence of multinational companies on national stock exchanges"). Relying on "the Eleventh Circuit's approach," the court concluded that preclusion is required where plaintiffs "premise[] their claims on * * * 'fraud that induced [the plaintiffs] to invest.'" *Id.* at 64a (quoting *Instituto de Prevision*

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[4] The district court's opinion analyzes whether the Louisiana actions are precluded by SLUSA; the court later issued separate orders dismissing the other actions for the reasons set forth in that opinion. See Pet. App. 8a, 10a, 13a.

Militar v. *Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) (alterations and omissions in original). Second, the court held that "[p]laintiffs' allegations * * * reasonably imply" that some investors had sold covered securities in order to obtain the money to purchase CDs. *Id.* at 67a. In the court's view, "SLUSA preclusion applies even if only a single plaintiff sold a single SLUSA-covered security" to finance such an "acquisition." *Id.* at 68a-69a.

b. The court of appeals reversed. Pet. App. 1a-41a. The court stated that "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are more than tangentially related." *Id.* at 32a (quoting *Madden* v. *Cowen & Co.*, 576 F.3d 957, 965-966 (9th Cir. 2009)) (emphasis omitted). The court concluded that neither of the grounds for preclusion invoked by the district court satisfied that standard.

First, the court of appeals deemed the "references to SIB's portfolio being backed by 'covered securities' to be merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendants' fraud." Pet. App. 36a; see *id.* at 37a. In the court's view, the alleged misrepresentation about the nature of SIB's investments was only one of a "host of (mis)representations"—including statements that the bank was insured, professionally staffed, and carefully audited—that were intended to induce investors to purchase the CDs. See *id.* at 35a-36a & n.3. The court also observed that, because the CDs promised a fixed rate of return, they were not "tied to the success of any of SIB's purported investments" in covered securities. *Id.* at 37a; see *ibid.* (stating that plaintiffs did not allege that "they deposited their money in the bank for

the purpose of purchasing covered securities") (internal quotation marks omitted).

Second, the court of appeals held that there was an insufficient "connection between the fraud and [the] sales" of covered securities that certain investors had undertaken to raise money to buy CDs. Pet. App. 39a. The court concluded that "[c]onstruing SLUSA to depend on the source of funds where the defendant does not care leads to absurd results," permitting two virtually identical claims to be treated differently under SLUSA. *Id.* at 39a n.7.

Finally, the court of appeals held that SLUSA did not preclude the claims against the Proskauer Defendants for allegedly "aiding and abetting the Stanford Ponzi scheme." Pet. App. 40a. The court noted that, while "[t]he core allegation" against those defendants is that "the Stanford Ponzi scheme could not have been accomplished" without their assistance, the Proskauer Defendants were also alleged to have made misrepresentations to the Commission that it lacked authority to investigate the Stanford entities. *Id.* at 40a-41a. The court concluded that those statements did not trigger SLUSA preclusion because they were "not more than tangentially related to the purchase or sale of covered securities." *Id.* at 41a.

DISCUSSION

Although the Fifth Circuit erred in its application of SLUSA's preclusion provision, its decision does not conflict with any decision of another circuit. This case, moreover, involves an unusual fact pattern, in which wrongdoers made misrepresentations about their own purchases of SLUSA-covered securities in order to induce plaintiffs to purchase *un*covered investment vehicles. A holding that SLUSA applies (or does not ap-

ply) in this setting would do little to guide lower courts in resolving the mine run of SLUSA controversies. Further review is not warranted.

1. As this Court recognized in *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71 (2006), the term "in connection with" means the same thing in SLUSA that it means in Section 10(b), and therefore must be given a "broad construction." *Id.* at 85; see, *e.g.*, *SEC* v. *Zandford*, 535 U.S. 813, 819 (2002) (explaining that the phrase "in connection with the purchase or sale" of a security in Section 10(b) "should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes"). To be sure, "the statute must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of § 10(b)." *Id.* at 820. But "it is enough" to meet the "in connection with" requirement "that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Dabit*, 547 U.S. at 85 (quoting *United States* v. *O'Hagan*, 521 U.S. 642, 651 (1997)); see *Zandford*, 535 U.S. at 824 (holding that "a fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide" falls within the scope of Section 10(b)); *Superintendent of Ins.* v. *Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971) (holding that Section 10(b) was violated because "[t]he crux of the present case is that [plaintiff] suffered an injury as a result of deceptive practices touching its sale of securities as an investor").

The language the Fifth Circuit used to describe the "in connection with" requirement is faithful to those precedents. The court stated that "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock

sale coincide or are more than tangentially related." Pet. App. 32a (quoting *Madden*, 576 F.3d at 965-966) (emphasis omitted). That is essentially a restatement of this Court's rulings that "coincide[nce]" or "touching" satisfies the "in connection with" requirement. *Dabit*, 547 U.S. at 85; *Bankers Life*, 404 U.S. at 12-13. It also ensures that the statutory phrase—and the SEC's enforcement power under Section 10(b)—will be given real breadth, without expanding so far as to sweep in ordinary fraud that has only a fortuitous linkage to a securities transaction. See Pet. App. 32a (citing *Zandford*, 535 U.S. at 820).

The Fifth Circuit erred, however, in applying that standard to the facts of this case. In assessing whether the alleged fraud was "more than tangentially related" to a purchase or sale of covered securities, the court underestimated the role that the statements about SIB's investment portfolio played in the Stanford Ponzi scheme. The "crux" of the fraud, *Bankers Life*, 404 U.S. at 12-13; Pet. App. 36a, was to convince investors that the CDs were safe, liquid investments that would deliver high returns. The representation that the CDs would be backed by "a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks," Pet. App. 8a, was important to the success of that tactic. There was no other apparent source of the funds necessary to make the CDs function "[l]ike well-performing equities," *id.* at 11a, and to allow the investors to realize the financial benefits they had been promised. Indeed, the plaintiffs in one of the Louisiana actions specifically alleged that they "would not have purchased the SIB CDs" if they had "been aware of the truth" that SIB's "portfolio consisted primarily of illiq-

uid investments or no investments at all." *Id.* at 13a. Accordingly, the purported existence of covered securities transactions was far from "tangential" to the fraudulent scheme and the misrepresentations that supported it.

The court of appeals appeared to believe (Pet. App. 35a-37a) that the importance of the statements about SIB's transactions in covered securities was diminished by the existence of various other misrepresentations (*e.g.*, that SIB was scrutinized by government auditors, that it employed a professional staff, and that the CDs were protected by an insurance policy from Lloyd's of London, see *e.g.*, *id.* at 9a, 37a) allegedly made to convince investors that the CDs were a sound purchase. That is incorrect. Those other misrepresentations could certainly have been relevant to a prospective purchaser. But only the assertions about covered securities would have answered investors' questions about *how* SIB would be able to deliver the promised high returns on the CDs—questions that any reasonable investor would have asked before buying a financial instrument from a foreign bank. And many of the other misrepresentations to which the court of appeals referred seem to have been designed to bolster the lie about the backing securities, suggesting to investors that trained staff operating under knowledgeable supervision were successfully carrying out trades in "highly marketable securities" to ensure the financial health of the bank. See *id.* at 8a, 37a.

To be sure, the scheme alleged here is relatively far removed from the paradigmatic SLUSA-precluded case. At the core of SLUSA preclusion are cases in which the defendant misrepresents facts about a covered security in order to induce purchases or sales *of that security*, or

to affect the market in that security. Cf. *Dabit*, 547 U.S. at 89 (explaining that "fraudulent manipulation of stock prices * * * unquestionably qualifies as fraud 'in connection with the purchase or sale of securities' as the phrase is defined in" this Court's decisions). See Pet. App. 60a (stating that "direct transactions in 'covered securities,' such as a plaintiff's purchase of stock on the New York Stock Exchange, most readily present opportunities for SLUSA preclusion"). In this case, by contrast, the investors to whom the misrepresentations were made never purchased any covered securities themselves, and the fraud had no prospect of affecting the market in such securities. Rather, the wrongdoers falsely claimed to be owners of covered securities in order to induce the fraud victims to purchase *un*covered investment vehicles.

Nevertheless, although this case falls outside the heartland of SLUSA preclusion, it is covered by the plain terms of the statute. *Dabit* makes clear that the necessary "connection" can exist even when the plaintiff was not induced to purchase or sell a covered security. See *Dabit*, 547 U.S. at 85. It is also clear that the "in connection with" requirement can be satisfied "even though the person or entity defrauded is not the other party to the trade." *O'Hagan*, 521 U.S. at 656. False statements about one's own transactions in covered securities are naturally characterized as misrepresentations "in connection with the purchase or sale of" such securities. And while Stanford and SIB did not seek to induce investors to purchase covered securities, their misrepresentations about their own holdings were crucial to the Stanford fraud. Reading the "in connection with" requirement "flexibly," *Zandford*, 535 U.S. at 819, the allegations in this case establish a connection be-

tween the misrepresentations and covered securities transactions that is sufficient to trigger SLUSA preclusion.

2. a. Although the Fifth Circuit applied its "more than tangentially related" analysis too stringently, its ruling does not conflict with any decision of another circuit. Petitioners contend (*e.g.*, 12-79 Pet. 18-21) that other courts of appeals use words to describe the "in connection with" requirement—"induce," "depend," and "necessarily involve"—that would have changed the outcome here. But none of the decisions on which petitioners rely analyzed a multi-layered transaction in which misrepresentations concerning supposed purchases and sales of covered securities induced investors to buy uncovered securities. The language used by other circuits is not designed for grappling with such a situation, and it is not clear how those courts would rule if they were confronted with it.

Petitioners place particular reliance on the Eleventh Circuit's decision in *Instituto de Prevision Militar* v. *Merrill Lynch*, 546 F.3d 1340 (2008) (*IPM*), on the ground that the district court in this case relied on *IPM* and held that respondents' suits were precluded. See, *e.g.*, 12-79 Pet. 17-19; Pet. App. 64a. In *IPM*, the plaintiff gave money to a company called Pension Fund of America (PFA) to place in retirement trust accounts, which the court held were "covered securities." 546 F.3d at 1351. PFA stole the money instead, and the plaintiff subsequently sued Merrill Lynch under state law for promoting PFA and failing to stop the theft. See *id.* at 1343-1344 (explaining that Merrill Lynch had deposited the plaintiff's money "in an account 'titled in the name of'" PFA and had permitted PFA to transfer money out of the account). The Eleventh Circuit noted

that a fraud can be "in connection with" a securities transaction where a defendant accepts money "'as payment for securities' with no intent to deliver them." *Id.* at 1349 (quoting *Grippo* v. *Perazzo*, 357 F.3d 1218, 1224 (11th Cir. 2004), and citing *Wharf (Holdings) Ltd.* v. *United Int'l Holdings, Inc.*, 532 U.S. 588, 597 (2001)). The court held that the suit was precluded because the plaintiff "is complaining about fraud that induced it to invest with PFA." *Ibid*; see *id.* at 1350.

Petitioners' claim of a conflict with *IPM* is mistaken because *IPM* differs from this case in a crucial respect. In *IPM*, PFA falsely represented to the victim of the fraud that it would become the owner of covered securities, namely the retirement trust accounts. See 546 F.3d at 1342-1343, 1350-1351. Here, by contrast, SIB falsely represented that the fixed-return CDs would be backed by covered securities, but respondents were not promised any ownership or similar beneficial interest in the covered securities themselves. That distinction is particularly salient because "[a] contract to purchase or sell securities is expressly defined by § 3(a) of the 1934 Act, 15 U.S.C. § 78c(a), as a purchase or sale of securities for the purposes of that Act," even when (due to one party's breach of the agreement) no securities ultimately change hands. *Blue Chip Stamps*, 421 U.S. at 750-751 (footnote omitted). The plaintiff in *IPM*, who had parted with money in exchange for a promise to place the funds in retirement trust accounts, had thus made (and had alleged misrepresentations closely connected to) an *actual* "purchase" of covered securities as the 1934 Act defines that term, even though PFA absconded with the money. In this case, by contrast, Stanford's misrepresentations about non-existent transactions in covered

securities were integral to the fraud, but respondents did not contract to purchase any covered security.[5]

For similar reasons, the Second Circuit's decision in *Romano* v. *Kazacos*, 609 F.3d 512 (2010), does not conflict with the decision below. The plaintiffs in *Romano* alleged that Morgan Stanley had violated state law when it made misrepresentations that caused them to retire early, accept lump-sum retirement benefits, invest those benefits "in various [covered] securities through Morgan Stanley," and lose significant amounts of money. *Id.* at 515-517, 520-521, 523-524. The court noted that it had previously found SLUSA's "in connection with" requirement to be satisfied in cases where a plaintiff was allegedly "induced" to purchase the security that was the subject of a misrepresentation. *Id.* at 522 (quoting *Press* v. *Chemical Invest. Servs. Corp.*, 166 F.3d 529, 537 (2d Cir. 1999)). The court found that connection to be present in *Romano*, emphasizing the plaintiffs' assertion that "defendants fraudulently induced them to invest in securities with the expectation of achieving future returns that were not realized." *Id.* at 523; see *id.* at 524 (explaining that in this circumstance "both the misconduct complained of, and the harm incurred, rests on and arises from [covered] securities transactions"). As in *IPM*, the court in *Romano* thus addressed a situation at

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[5] Some petitioners argue (*e.g.*, 12-88 Pet. Reply 6) that SLUSA preclusion applies here because some plaintiffs *sold* covered securities to raise the money to purchase CDs. But neither *IPM* nor any other court of appeals decision that petitioners cite analyzes that kind of claimed "connection." Thus, no conflict exists with respect to the Fifth Circuit's holding that "[c]onstruing SLUSA to depend on the source of funds where the defendant does not care leads to absurd results." Pet. App. 39a & n.7.

the core of SLUSA, namely a fraudulent scheme to induce investments in covered securities.

The decision below also does not conflict with the Sixth Circuit's decision in *Segal* v. *Fifth Third Bank*, 581 F.3d 305 (2009), cert. denied, 130 S. Ct. 3326 (2010), which likewise did not involve a multi-layered transaction. In *Segal*, a beneficiary of trust accounts alleged that the trustee had breached its fiduciary duties by "investing fiduciary assets in proprietary * * * mutual funds," which were covered securities, "rather than superior funds operated by * * * competitors." *Id.* at 308; see *id.* at 309. The court concluded that "[a]ll of Segal's counts—breach of fiduciary duty, unjust enrichment, breach of contract—revolve around [defendant's] decision to buy mutual fund shares. Segal's allegations do not merely 'coincide' with securities transactions; they depend on them." *Id.* at 310. The "depend[ence]" to which the court referred was one in which all of the fraud allegations centered around a single transaction in covered securities in which the plaintiff had a beneficial interest. That kind of dependence is not present in this case, where respondents neither acquired nor believed they were acquiring any beneficial interest in the covered securities to which Stanford's misrepresentations referred. See Pet. App. 37a (noting that respondents did not allege that "they deposited their money in the bank for the purpose of purchasing covered securities") (internal quotation marks omitted). In contending that the case would have come out differently under *Segal* (*e.g.*, 12-79 Pet. Reply 7), petitioners wrest the word "depend" from its context and apply it to a set of circumstances that the Sixth Circuit did not contemplate.

In sum, none of the decisions cited by petitioners is inconsistent with the Fifth Circuit's decision. To be

sure, the courts of appeals have used "slightly different articulation[s]" in assessing SLUSA preclusion, Pet. App. 20a; see *id.* at 31a; *Romano*, 609 F.3d at 522—just as this Court has variously used the terms "touch[]" and "coincide" to describe the requisite connection between a misrepresentation and a securities transaction, *Dabit*, 547 U.S. at 85; *Bankers Life*, 404 U.S. at 12-13. But that variation does not mean that the courts of appeals have applied substantively different understandings of the "in connection with" requirement. And while the Fifth Circuit proffered some assessment of the language used by its sister circuits, the court also correctly noted that other court of appeals cases were not "factually analogous" to this one because they did not involve alleged fraud that "centered around the purchase or sale of an uncovered security," as to which the SLUSA preclusion analysis is "more complex." Pet. App. 20a.

b. Petitioners also contend that *IPM* and *Segal* conflict with the decision below on a different basis: their treatment of alleged misrepresentations that have no connection whatever with covered securities transactions. Petitioners assert (*e.g.*, 12-86 Pet. 23-25) that the Fifth Circuit diverged from other circuits in finding such misrepresentations relevant to the "in connection with" inquiry.

That assertion is mistaken. The Fifth Circuit's analysis of the "host of (mis)representations" before it was undertaken in the course of ascertaining whether the "in connection with" requirement was met at all—that is, whether the alleged fraud was sufficiently connected to the purchase or sale of covered securities. See Pet. App. 35a-37a. In contrast, the courts in *IPM* and *Segal* first ascertained that a sufficient connection existed to trigger SLUSA preclusion, and then addressed a distinct

and analytically subsequent issue: whether an action can nevertheless go forward if it "premises liability on multiple factual theories," some of which do not involve "representations made 'in connection with the purchase or sale' of a security." *IPM*, 546 F.3d at 1350; see *Segal*, 581 F.3d at 311-312; see also, *e.g.*, *Proctor* v. *Vishay Intertech. Inc.*, 584 F.3d 1208, 1227 (9th Cir. 2009) ("SLUSA does not require the dismissal of non-precluded claims along with precluded claims."); cf. *Rowinski* v. *Salomon Smith Barney Inc.*, 398 F.3d 294, 305 (3d Cir. 2005) ("[W]e need not decide whether a count-by-count analysis is appropriate in this case, because plaintiff has incorporated every allegation into every count in his complaint.").

Because the courts in *IPM* and *Segal* addressed allegations that lie in the heartland of SLUSA preclusion, those decisions do not conflict with the Fifth Circuit's ruling here. Misrepresentations inducing plaintiffs to invest in covered securities clearly meet the "in connection with" requirement, regardless of what other misrepresentations the defendants might have made. Because neither *IPM* nor *Segal* involved misrepresentations designed to induce investments in uncovered securities, the Eleventh and Sixth Circuits had no occasion to undertake (or reject) the analysis in which the Fifth Circuit engaged.

c. Finally, some petitioners argue that the decision below creates a circuit split relating to aiding and abetting liability. They contend that the Fifth Circuit rejected the rule applied in the Ninth and Eleventh Circuits, where aiding and abetting claims are always precluded if "the underlying fraud is SLUSA-covered." 12-79 Pet. 30 (citing *Proctor*, 584 F.3d at 1223, and *IPM*, 546 F.3d at 1351).

That contention rests on a misunderstanding of the decision below. The Fifth Circuit addressed aiding and abetting liability only after concluding that the claims against the primary violators were *not* precluded under SLUSA. The court did not suggest that the claims against the aiders and abettors could have gone forward if the claims against the primary violators had been barred.

To be sure, the court of appeals did examine the specific misrepresentations that the Proskauer Defendants were alleged to have made, to see if there was some independent basis for preclusion as to those defendants that did not apply to the primary violators. See Pet. App. 40a-41a. That analysis, however, is fully consistent with the rule that preclusion of claims against primary violators results in preclusion of claims against aiders and abettors as well. And the court's approach did not harm the Proskauer Defendants; it benefited them, by giving them a second opportunity to prove preclusion and thereby increasing the chances that SLUSA would result in dismissal of the claims against them.

3. This Court has already addressed the "in connection with" requirement on numerous occasions, both in construing SLUSA and in clarifying the scope of Section 10(b)'s substantive prohibition. See, *e.g.*, *Dabit*, 547 U.S. at 85; *Zandford*, 535 U.S. at 819; *O'Hagan*, 521 U.S. at 651, 658; *Bankers Life*, 404 U.S. at 8-9. The courts of appeals are applying the principles laid down in this Court's decisions, albeit with some "slight[]" differences in "articulation." Pet. App. 20a. The circuits' use of varying terminology does not evidence any significant substantive disuniformity. Rather, because the courts of appeals have applied SLUSA's "in connection with" requirement to fraudulent schemes having a variety of

asserted links to covered securities, the use of somewhat different phrasing in different cases is all but inevitable.

Review would be unwarranted in this case, moreover, even if the current body of appellate precedent suggested widespread confusion as to the proper construction of SLUSA's "in connection with" requirement.[6] Respondents alleged that the wrongdoers in this case had made false representations concerning SIB's fictitious holdings in SLUSA-covered securities, for the purpose of inducing respondents to invest in *un*covered securities. As we explain above, those misrepresentations were "in connection with the purchase or sale of a covered security" under an appropriately broad reading of SLUSA's preclusion provision. Nevertheless, respondents' allegations are significantly removed both from the core of SLUSA preclusion and from the types of allegations with which the courts of appeals have typically dealt. Indeed, petitioners rely on no other court of appeals decision applying SLUSA to misrepresentations about covered securities that were designed to induce investments in uncovered securities. This case therefore would be a poor vehicle for clarifying SLUSA's application to more usual fact patterns.[7]

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[6] Contrary to the contention of certain respondents (12-86 Opp. 6-10), there is no jurisdictional bar to this Court's consideration of the case. See *Aetna Cas. & Sur. Co.* v. *Flowers*, 330 U.S. 464, 466-467 (1947) (rejecting argument that "a decision of a Circuit Court of Appeals ordering remand of a case to a state court" is unreviewable on certiorari when "the mandate of that court has issued and the District Court has remanded the cause to the state court").

[7] The unusual nature of the allegations here also suggests that petitioners' fears about forum-shopping and unreviewability of future SLUSA cases (*e.g.*, 12-79 Pet. 25, 31; 12-88 Pet. 31) are overstated. The Fifth Circuit's decision seems unlikely to motivate plaintiffs in typical SLUSA-related cases to flock to courts within that circuit.

Indeed, if review were granted, this Court's decision could ultimately turn on even more idiosyncratic aspects of the record in this case. The misrepresentations that petitioners are alleged to have made did not refer specifically to securities listed on a regulated national exchange. Rather, respondents alleged misrepresentations to the effect that SIB held "a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." Pet. App. 8a. Because securities having those characteristics "typically qualify as SLUSA-covered securities," *id.* at 72a; see *id.* at 65a n.11, we believe that petitioners' alleged false statements are properly treated, for purposes of SLUSA preclusion, as implicit representations that SIB would invest the proceeds of the CD sales in securities listed on a regulated national exchange. But if the Court granted review and ultimately declined to draw that inference, its decision would be unlikely to provide any meaningful guidance for the resolution of other SLUSA disputes.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2012

AMICUS CURIAE BRIEF

ION FILED
AUG 22 2012
RECORD AND BRIEFS

Nos. 12-79, 12-86 & 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP,
Petitioner,

v.

SAMUEL TROICE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF OF BREAZEALE, SACHSE & WILSON, LLP AS *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRIT OF CERTIORARI

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to Rule 37.2(b) of the Rules of the Supreme Court of the United States, Breazeale, Sachse & Wilson, LLP ("BSW") hereby respectfully moves for leave to file the accompanying brief as *amicus curiae* supporting the Petitions for a Writ of Certiorari in this case. Timely notice under Rule 37.1(a) of the intent to file this brief was provided to Petitioners and Respondents. Petitioners and Respondents Samuel Troice et al. have consented to the filing of this brief. Respondents James Roland et al. and Leah Farr et al. have declined to consent on the ground that they believe "the Supreme Court has no jurisdiction to hear this appeal . . . based upon *Kircher v. Putnam Funds Trust*, 545 U.S. 633 (2006)."

BSW, a law firm in Louisiana, is a defendant in a securities class action lawsuit under Texas state law currently pending in the U.S. District Court for the Northern District of Texas. That lawsuit centers on allegations that BSW aided and abetted and conspired with a Ponzi scheme perpetrated by R. Allen Stanford through numerous corporate entities. BSW allegedly provided legal services to certain of these entities, and one of its partners, Claude F. Reynaud, Jr., allegedly also served as a director for one of these entities.

The Fifth Circuit decision that is the subject of the Petitions before this Court, *Roland v. Green*, 675 F.3d 502 (2012), also addresses allegations arising out of the Stanford Ponzi scheme. The holding of that decision relates directly to the issues raised in the lawsuit against BSW. As a result of the Fifth Circuit's decision, BSW has been unable to obtain dismissal of its lawsuit. Accordingly, BSW has a direct and

immediate interest in the outcome of the pending Petitions for a Writ of Certiorari.

BSW believes that the attached brief sheds additional light on the issues presented in the Petitions for a Writ of Certiorari. In view of its interest in and unique perspective on these issues, BSW respectfully requests that the Court grant it leave to participate as *amicus curiae* by filing the accompanying brief in support of the Petitions for a Writ of Certiorari.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Breazeale, Sachse & Wilson, LLP is among the oldest and largest law firms in Louisiana. It is a defendant in a securities class action lawsuit under Texas state law currently pending in the U.S. District Court for the Northern District of Texas. The plaintiffs in that lawsuit allege that *amicus* aided and abetted and conspired with a Ponzi scheme perpetrated by R. Allen Stanford through numerous corporate entities. *Amicus* allegedly provided legal services to certain of these entities, and one of its partners, defendant Claude F. Reynaud, Jr., allegedly also served as a director for one of them.

Under the Securities Litigation Uniform Standards Act (SLUSA), plaintiffs cannot pursue a class action under state law in any state or federal court if they allege a misrepresentation or omission of a material fact "in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). As a result of the Fifth Circuit's ruling in *Roland v. Green*, 675 F.3d 502 (5th Cir. 2012)—another case arising out of the Stanford Ponzi scheme—*amicus* has been unable to obtain dismissal of its lawsuit under SLUSA. Accordingly, *amicus* has a direct and immediate interest in the outcome of the pending Petitions for a Writ of Certiorari.

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[1] No counsel for a party authored this brief in whole or in part. No person or entity other than *amicus*, its counsel or its members made any monetary contribution intended to fund the preparation or submission of this brief. Petitioners and Respondents Samuel Troice et al. have consented to the filing of this brief, but Respondents' counsel for James Roland et al. and Leah Farr et al. has withheld consent. Consequently, *amicus* has filed a motion for leave to file this brief. Counsel of record provided the required notice to the parties at least ten days before the filing deadline for this brief.

SUMMARY OF ARGUMENT

The Fifth Circuit's decision in *Roland v. Green* substantially undermines the protections Congress has provided securities class action defendants, particularly parties such as *amicus* who are alleged to have aided and abetted state law securities violations. The court's interpretations of SLUSA's "in connection with" requirement are incorrect and inconsistent with the holdings of other courts of appeal.

First, the Fifth Circuit applied a standard for SLUSA's "in connection with" requirement that limits preclusion to cases in which the alleged misrepresentation in connection with a covered security predominates the complaint and directly involves the defendant named in the complaint. Pet. App. 42–43. This ruling conflicts with the plain language of the statute and the decisions of this Court, as well as rulings of other courts of appeal.

Second, the Fifth Circuit held that SLUSA's "in connection with" requirement cannot be met if the complaint brings claims "solely for aiding and abetting" a fraudulent scheme and does not allege any misrepresentations in connection with a security made by the aider or abettor to the plaintiffs. *Id.* at 42. Again, this ruling conflicts with the plain language of the statute and the decisions of this Court, as well as rulings of other courts of appeal.

As illustrated by the circumstances of *amicus*, the Fifth Circuit's holding is particularly problematic for alleged aiding and abetting violators. With respect to such defendants, who are necessarily "one level removed" from the alleged fraud, *id.* at 42, plaintiffs can easily argue under the Fifth Circuit standard

that alleged misrepresentations in connection with the purchase or sale of securities are "merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendant's fraud," *id.* at 37–38.

Moreover, the Fifth Circuit's holding would allow plaintiffs who have no private right of action to allege aiding and abetting liability for alleged misrepresentations under federal law to bring virtually identical class action claims under state law, undermining SLUSA's purpose and leading to wasteful, duplicative litigation.

Respectfully, the Court should grant the Petitions for a Writ of Certiorari to resolve the entrenched circuit split on these issues and to ensure that SLUSA's plain language and clear legislative purpose are given effect.

REASONS FOR GRANTING THE PETITIONS

I. THE COURT SHOULD GRANT THE PETITIONS TO CLARIFY A NATIONAL STANDARD FOR SLUSA'S "IN CONNECTION WITH" REQUIREMENT THAT COMPORTS WITH THE STATUTE'S LANGUAGE

SLUSA precludes certain class actions under state law alleging "a misrepresentation . . . in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). SLUSA's purpose, clearly stated in the statute itself, is to impose "national standards for securities class action lawsuits involving nationally traded securities," and to "prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of" the Private Securities Litigation Reform Act (PSLRA).

SLUSA, Pub. L. No. 105-353, § 2(5), 112 Stat. 3227, 3227 (1998). The PSLRA, in turn, imposes heightened pleading standards and other restrictions on securities fraud cases filed in federal court in order to prevent "perceived abuses of the class-action vehicle in litigation involving nationally traded securities." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 81 (2006).

Consistent with SLUSA's stated purpose, the Act's "in connection with" requirement is given the same "broad construction" that is applied to the identical language of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b). *Dabit*, 547 U.S. at 85–86. This Court has instructed that the "in connection with" requirement "should be construed not technically and restrictively, but flexibly to effectuate its remedial purpose." *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (internal quotation marks omitted); *accord Superintendent of Ins. of State of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971) (explaining, prior to enactment of SLUSA, that "Section 10(b) must be read flexibly, not technically and restrictively"). Specifically, "it is enough that the scheme to defraud and the sale of securities coincide." *Zandford*, 535 U.S. at 822.

In the ruling below, the Fifth Circuit departed from the plain language of SLUSA and this Court's guidance. The court recognized that the complaints alleged a misrepresentation involving the purchase or sale of covered securities—namely, that the Certificates of Deposit marketed and sold by the Stanford entities were backed by a portfolio of covered securities "issued by stable governments, strong multinational companies and major international banks." Pet. App. 12 (internal quotation marks

omitted). Nonetheless, the court concluded that the alleged misrepresentation was only "one of a host of (mis)representations made . . . in an attempt to lure [investors] into buying the worthless CDs." *Id.* at 36. The court also concluded that the sale of covered securities by at least one of the plaintiffs in order to generate funds to purchase the CDs was "not more than tangentially related to the fraudulent scheme." *Id.* at 41.

1. The Fifth Circuit's novel interpretation of SLUSA's "in connection with" requirement—imposing the additional burden that the alleged misrepresentation must be at the heart of the defendant's fraud and not too tangential—cannot be squared with the plain language of the statute. That language refers to actions alleging "*a* misrepresentation," without qualification, "in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1) (emphasis added).

Moreover, the "in connection with" requirement is not restrictive; "[i]t is enough that the scheme to defraud and the sale of securities coincide." *Zandford*, 535 U.S. at 822. A misrepresentation may be in connection with the purchase or sale of a security even if, as a result of the fraud, the transaction proves to be "purported" rather than "real." Pet. App. 34; *see Grippo v. Perazzo*, 357 F.3d 1218, 1223–24 (11th Cir. 2004) ("in connection with" requirement met because money accepted as payment for securities even if not "actually used to purchase any security"); *In re Beacon Assocs. Litig.*, 745 F. Supp. 2d 386, 430 (S.D.N.Y. 2010) ("in connection with" requirement met because investors told covered securities would be purchased, even though "trades never took place").

SLUSA requires only an alleged "misrepresentation . . . in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). Contrary to the Fifth Circuit's decision, nothing in this statutory language permits courts to require that the alleged misrepresentation in connection with a covered security *predominate* the complaint.

2. The Fifth Circuit's ruling is inconsistent with this Court's precedent holding that the focus of the "in connection with" inquiry should be the nature of the fraudulent scheme, not the specific roles of the parties to the action. In *Dabit*, the Court held that an alleged fraud was "in connection with" the purchase or sale of covered securities despite the fact that the plaintiffs were only holders, not purchasers or sellers, of the securities. The Court explained that the identity of the party was "irrelevant" and that the focus should be the wrongdoing at issue: "[T]he identity of the plaintiffs does not determine whether the complaint alleges fraud 'in connection with the purchase or sale' of securities. The misconduct of which respondent complains here . . . unquestionably qualifies . . . ." *Dabit*, 547 U.S. at 89.

Similarly, in *United States v. O'Hagan*, 521 U.S. 642 (1997), the Court held that the "in connection with" requirement was satisfied in an alleged misappropriation case "even though the person or entity defrauded [was] not the other party to the trade [of covered securities], but [was], instead, the source of the nonpublic information." *Id.* at 656. The Court "note[d] again that § 10(b) refers to 'the purchase or sale of any security,' not to identifiable purchasers or sellers of securities." *Id.* at 660.

3. The Fifth Circuit's holding creates a clear circuit split over the proper interpretation of the "in con-

nection with" requirement. The court below expressly rejected Second and Eleventh Circuit standards that would have dictated SLUSA preclusion in this case. Pet. App. 32. Under Eleventh Circuit precedent, the "in connection with" requirement is met if the plaintiff alleges "fraud that induced [the plaintiff] to invest with [the primary violator] . . . or a fraudulent scheme that coincided and depended upon the purchase or sale of securities." *Instituto De Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) ("*IPM*"). In the Second Circuit, the "in connection with" requirement is met if the plaintiff's claims "necessarily allege, necessarily involve, or rest on the purchase or sale of securities." *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010) (internal quotation marks omitted).

The Fifth Circuit purported to adopt the Ninth Circuit's standard that "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*." Pet. App. 33 (quoting *Madden v. Cowen & Co.*, 576 F.3d 957, 965–66 (9th Cir. 2009)). However, the Fifth Circuit went far beyond the holding in the *Madden* case, which applied the SLUSA preclusion provision to claims based on a misleading fairness opinion related to a stock-for-stock merger. *Madden*, 576 F.3d at 965–69. The Ninth Circuit held that the SLUSA provision applied even to a claim of malpractice for failing to give good advice while plaintiffs were considering a cash offer. *Id.* at 967.

Under both the Eleventh and Second Circuit standards, courts have ruled that SLUSA preclusion applies to alleged facts very similar to those in the cases at bar. In *IPM*, the Eleventh Circuit held that

SLUSA precluded claims against Merrill Lynch for assisting a pension fund that allegedly "defrauded investors . . . by stealing their money rather than investing it" in covered securities. 546 F.3d at 1342, 1352. District courts in the Second Circuit have repeatedly held that SLUSA precludes claims against funds that invested with Bernard Madoff, who falsely claimed to be using the investments to purchase covered securities. *See , e.g., In re Herald, Primeo & Thema Sec. Litig.*, No. 09 Civ. 289, 2011 WL 5928952, at *8 (S.D.N.Y. Nov. 29, 2011); *Backus v. Conn. Cmty. Bank, N.A.*, 789 F. Supp. 2d 292, 302–06 (D. Conn. 2011). *But see Anwar v. Fairfield Greenwich Ltd.*, 728 F. Supp. 2d 372, 398–99 (S.D.N.Y. 2010). Had the Fifth Circuit applied these standards below, the state claims would have been precluded.

This Court should grant the Petitions for a Writ of Certiorari to correct the Fifth Circuit's erroneous interpretation of the "in connection with" requirement and to resolve the conflict among several circuits regarding the appropriate legal standard.

II. THE COURT SHOULD GRANT THE PETITIONS TO CLARIFY THE TREATMENT OF AIDING AND ABETTING CLAIMS UNDER SLUSA

As an extension of its ruling on SLUSA's general applicability to state law securities claims, the Fifth Circuit also concluded that SLUSA's "in connection with" requirement cannot be met if the complaint brings claims "solely for aiding and abetting" a fraudulent scheme and does not allege any misrepresentations in connection with a covered security by the aider or abettor to the plaintiffs. Pet. App. 42–43. For the same reasons discussed above,

this holding is inconsistent with the plain language of the statute and this Court's precedent. It is also in conflict with the rulings of other courts of appeal. *See IPM*, 546 F.3d at 1348–49; *Proctor v. Vishay Intertech. Inc.*, 584 F.3d 1208, 1222–23 (9th Cir. 2009).

This case has important implications for *amicus*, which is alleged to have aided and abetted and conspired in the Stanford Ponzi scheme but not to have made any misrepresentations of its own. The Fifth Circuit's holding allows class action plaintiffs to defeat SLUSA's legislative purpose and evade the protections of the PSLRA by pursuing state law claims of secondary liability against some defendants even while they are precluded from bringing parallel claims against the primary tortfeasors. With respect to secondary defendants, who are one level removed from the alleged fraud, plaintiffs can easily circumvent the PSLRA by arguing under the Fifth Circuit standard that alleged misrepresentations in connection with the purchase or sale of securities are "merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendant's fraud." Pet. App. 37–38. Wasteful, duplicative litigation will result.

SLUSA requires only that a state law class action complaint allege "a misrepresentation . . . in connection with the purchase or sale of a covered security." The Act does not distinguish between different types of defendants based on their level of involvement or claims of primary or secondary liability. Certainly nothing in the statutory language requires that the alleged misrepresentation be made *by each defendant* or that it otherwise *directly involve each defendant*.

By contrast, the next provision of SLUSA precludes state law class actions alleging "that *the defendant* used or employed any manipulative or deceptive

device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(B) (emphasis added). If Congress had intended to limit SLUSA preclusion only to defendants who are alleged to have made their own misrepresentations in connection with the purchase or sale of a covered security, Congress would have written the statute the same way. "Where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quotation omitted).

The Fifth Circuit's holding regarding aiding and abetting defendants is inconsistent with this Court's reasoning in *Dabit*. In contrast to the broad scope of the "in connection with" requirement under both Section 10(b) and SLUSA, this Court has recognized a narrower judicially created private right of action under Rule 10b-5. *See* 547 U.S. at 84–85. Private claims under Rule 10b-5 can only be brought by those who purchased or sold securities, not by mere holders of securities. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 754–55 (1975). In addition, private claims can only be brought against primary violators, not against aiders and abettors or other secondary violators. *See Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 162–63 (2008); *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 190 (1994); *see also* 15 U.S.C. § 78t(e).

In *Dabit*, the Court confronted and rejected the argument that one of these limitations on private rights of action (the securities holder limitation) should also apply to limit the scope of SLUSA. 547

U.S. at 86. The Court held that SLUSA preempts state law class actions by holders even while the same plaintiffs do not have a private right of action under the "in connection with" provision of Rule 10b-5. *Id.* at 87.

In reaching this conclusion, the Court relied upon the "broad construction" of SLUSA. *Id.* at 85. The Court also emphasized the perverse practical consequences of the plaintiff's argument against preclusion:

> Respondent's preferred construction . . . would give rise to wasteful, duplicative litigation. Facts supporting an action by purchasers under Rule 10b-5 (which must proceed in federal court if at all) typically support an action by holders as well . . . . *The prospect is raised, then, of parallel class actions proceeding in state and federal court, with different standards governing claims asserted on identical facts.* That prospect . . . squarely conflicts with the congressional preference for "national standards for securities class action lawsuits involving nationally traded securities."

Id. at 86–87 (quoting SLUSA, § 2(5), 112 Stat. at 3227) (emphasis added).

Precisely the same reasoning applies to the Fifth Circuit's ruling here. If the ruling is allowed to stand, plaintiffs will be able to bring securities claims against alleged aiders and abettors such as *amicus* in state law class actions, without PSLRA protections, because they do not allege any misrepresentations made by such defendants. Meanwhile, litigation

against the primary violators who allegedly made the misrepresentations will have to proceed in federal court under SLUSA and the PSLRA. As this Court forewarned, the result would be duplicative securities litigation under inconsistent standards, exactly what SLUSA was intended to prevent.

In other words, just as *Dabit* affirmed that SLUSA preempts state law class actions by holders, the Court should affirm too that SLUSA preempts state law class actions alleging aiding and abetting liability. Respectfully, the Court should grant the Petitions for a Writ of Certiorari in order to clarify the treatment of aider and abettor claims under SLUSA, consistent with that Act's clear legislative purpose.

CONCLUSION

For the foregoing reasons, the Petitions for a Writ of Certiorari should be granted.

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AMICUS CURIAE BRIEF

Supreme Court, U.S.
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William K. Suter,

No. 12-86

In the Supreme Court of the United States

WILLIS OF COLORADO INCORPORATED, ET AL.,
PETITIONERS

v.

SAMUEL TROICE, ET AL.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MOTION FOR LEAVE TO FILE AND BRIEF *AMICUS CURIAE* OF DRI—THE VOICE OF THE DEFENSE BAR IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

Pursuant to this Court's Rule 37.3(b), DRI—The Voice of the Defense Bar ("DRI") respectfully requests leave to file this *amicus curiae* brief in support of the Petitioners.

After the undersigned counsel provided the timely notice required by Supreme Court Rule 37(2)(a), counsel for the Petitioners, as well as counsel for Respondents Troice, Mendez, and Punga Punga, consented to the filing of this brief. Letters showing their consent are being transmitted with this Motion. Counsel for Respondents Roland, Giambrone, Bowden, Forbes, and Farr declined consent, requiring the filing of this motion.

DRI is uniquely well-situated to provide the Court with context for the important issues raised by the Petition and the dangers the Fifth Circuit's approach presents to U.S. capital markets, businesses, and third-party professional advisors like lawyers and auditors. As discussed further below, DRI and its members have extensive experience in defending private lawsuits under the federal securities laws and have an acute appreciation for the abuses that prompted Congress to take steps to rein in such lawsuits. DRI respectfully requests that its motion be granted and that the attached brief amicus curiae be included with the papers for consideration by the Court.

Respectfully submitted.

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QUESTION PRESENTED

Whether a covered state law class action complaint that unquestionably alleges "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security nonetheless can escape the application of SLUSA by including other allegations that are farther removed from a covered securities transaction.

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*[1]

Members of DRI—the Voice of the Defense Bar, an international organization of more than 22,000 attorneys involved in civil litigation defense—have wide experience in litigating securities class actions, and they understand how these actions can be abused. When this happens, it unnecessarily drives up the cost of doing business in the United States and reduces the competitiveness of U.S. capital markets. Congress and this Court have long been sensitive to this potential for abuse, and for that reason they have strictly limited both the kinds of securities claims that private citizens may bring and where and how they may bring them.

The Fifth Circuit's decision threatens to undo all this. By holding that the plaintiffs may proceed in state court on securities-related claims that would have been squarely precluded if they were brought under federal law, the panel below opened the door to the very same risks and abuses that this Court and Congress have worked for decades to avoid. At the same time, the panel widened the disagreement among the Circuits with regard to the scope of preclusion under the Securities Litigation Uniform Standards Act ("SLUSA"). This Court's intervention is warranted to resolve the conflict and ensure the lower courts' fidelity to the limits Congress and the Courts have placed on securities class actions.

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[1] No party or counsel for a party authored this brief in whole or in part, and no person or entity other than DRI and its counsel has made a monetary contribution to the preparation or filing of this brief.

This issue is of particular concern to DRI, which has long been committed to making the civil justice system fairer, more efficient, and—when national issues like U.S. capital markets are involved—more consistent. To promote these objectives, DRI often participates as *amicus curiae* in cases before this Court that raise issues important to its members, their clients, and the judicial system at large.

STATEMENT OF THE CASE

When Congress enacted the Securities Acts of 1933 and 1934 in the wake of the disastrous stock market crash of 1929, it created an "extensive scheme of civil liability" governing the national securities markets. *Central Bank of Denver* v. *First Interstate Bank of Denver*, 511 U.S. 164, 171 (1994). Since then, these "two statutes have anchored federal regulation of vital elements of our economy." *Merrill Lynch* v. *Dabit,* 547 U.S. 71, 78 (2006). Consistent with the national character of the U.S. securities markets, until 1995 nearly all significant private securities litigation was brought under the Securities Acts and filed in federal court.

This began to change in the 1990s, when Congress, reacting to widespread abuses, passed the Private Securities Litigation Reform Act ("PSLRA") and imposed strict limits on private securities lawsuits. Pub. L. No. 104-67, 109 Stat. 737, 15 U.S.C. § 78u-4; 15 U.S.C. § 78t(e). During the same period, this Court independently recognized that certain kinds of enforcement actions—notably those brought against defendants who allegedly aided or abetted securities fraud—were particularly prone to abuse and for that reason did not belong in the hands of private citizens

unless Congress provided otherwise. See *Central Bank*, 511 U.S. at 164; see also *Stoneridge Investment Partners, LLC* v. *Scientific-Atlanta,* 552 U.S. 148, 158, 163–64 (2008) (underscoring this limitation).

Predictably, the strict new PSLRA rules governing private lawsuits under federal law prompted an increase in securities-related lawsuits brought in state court under state law. So, in 1998, Congress passed another law—SLUSA—which precludes state law class action suits that involve misrepresentations "in connection with" the sale or purchase of a covered security. Pub. L. No. 105-353, 112 Stat. 3227, 15 U.S.C. § 78bb(f)(1).

This case is about the scope of SLUSA. In particular, it concerns whether the key phrase "in connection with" is broad enough to encompass state law actions like the ones here, which involved claims against third parties who provided services to—or otherwise did business with—an entity that made misrepresentations in connection with the purchase or sale of securities.

This case arises out of the collapse of a fraudulent scheme perpetrated by Allen H. Stanford and his affiliated companies, including Stanford International Bank ("SIB"), which issued worthless certificates of deposit that were allegedly backed by highly liquid securities. Unable to recover against the primary wrongdoers, the plaintiffs have turned their attention to a series of secondary actors, raising claims that would face significant obstacles in federal court. There are three basic types of claims at issue here: first, claims against an insurance company for its assurances that SIB had purchased insurance; second,

claims against SEI Investment Company, which provided fund management software to a fund that invested in the worthless SIB certificates of deposit; and finally, claims against Stanford's attorneys for allegedly misleading the Securities and Exchange Commission ("SEC") regarding its ability to regulate SIB.

The district court held that SLUSA precluded these claims because the underlying fraud unquestionably involved the purchase or sale of covered securities. The Fifth Circuit disagreed and, purporting to apply a test from the Ninth Circuit, found that the three types of claims in this case were only tangentially related to the "purchase or sale of a security," and thus fell outside of SLUSA's scope.

SUMMARY OF THE ARGUMENT

The decision below would seriously undermine SLUSA, which itself was enacted to keep the PSLRA reforms from becoming a dead letter. As this Court has already held, SLUSA's key phrase—"in connection with"—should be broadly interpreted to accomplish Congress's objectives. So construed, it is clear that the Fifth Circuit erred when it held that SLUSA did not apply here and, in doing so, furthered a significant dispute among the Circuits about SLUSA's reach.

The Fifth Circuit's decision is inconsistent not only with the statutory language but also with this Court's and Congress's view that the limits on securities class actions must be carefully policed, and that aiding and abetting claims, which are particularly prone to abuse, should be brought by the SEC and not by private parties. If allowed to stand, the decision

below will create a gaping loophole in the securities class action reforms and expose the U.S. capital markets to new and dangerous levels of liability. Moreover, this risk is unnecessary, because Congress has already given the SEC all the enforcement powers it needs to investigate those who lie to the Commission or aid another in committing securities fraud. To safeguard Congress's PSLRA reforms and the limits this Court has placed on private actions under the securities laws—and to ensure respect for the important policies served by SLUSA—this Court should grant the petition for certiorari and reverse the decision of the Fifth Circuit.

ARGUMENT

I. The plain language of SLUSA requires a broad reading of "in connection with."

SLUSA limits the ability of private citizens to bring "covered class actions based upon the statutory or common law of any state" in cases alleging:

> (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 78bb(f)(1).[2] "A 'covered class action' is a lawsuit in which damages are sought on behalf of

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[2] SLUSA amended the Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (1933 Act), and the Securities Exchange Act of 1934 , Pub. L. No. 73-298, 48 Stat. 881 (1934 Act) in "substantially

more than 50 people," and a "covered security" is "one traded nationally and listed on a regulated national exchange."[3] *Dabit*, 547 U.S. at 83.

While section B applies to cases alleging that "the defendant" used a "deceptive or manipulative device or contrivance," the section at issue in this case—section A—applies SLUSA preclusion to *any* case alleging a "misrepresentation or omission of material fact in connection with the purchase or sale of a covered security," without regard to the identity of either the person who made the misrepresentation or the person who purchased or sold the covered security. 15 U.S.C. § 78bb(f)(1).

As this Court has recognized, SLUSA's use of "in connection with" did not occur in a vacuum. See *Dabit*, 547 U.S. at 84–85. The same phrase appears in section 10 of the 1934 Act, and in that context, this Court has interpreted it broadly for over forty years. *Id.* at 85 ("[W]hen this Court *has* sought to give meaning to the phrase ['in connection with'] in the context of § 10(b) and Rule 10b-5, it has espoused a broad interpretation."). An interpretation that places "'broad discretionary powers' in the regulatory agency" has "been found practically essential" because "practices 'constantly vary and * * * practices legitimate for some purposes may be turned to illegitimate

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identical" ways. *Dabit*, 547 U.S. at 82 n. 6. Because they are more relevant here, we quote the amendments to the 1934 Act. See *ibid.*

[3] Respondents' lawsuits met the statutory definition of a "covered class action" once they were consolidated by the district court below. See Willis Pet. at 12 (citing 15 U.S.C. § 78bb(f)(5)(B)(ii)) (discussing the "grouping" of actions).

and fraudulent means.'" *Superintendent of Ins. of State of N.Y.* v. *Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971); see, *e.g.*, *Sec. Exch. Comm'n* v. *Zandford*, 535 U.S. 813, 819 (2002) (noting that "[i]n its role enforcing the Act, the SEC has consistently adopted a broad reading of the phrase 'in connection with the purchase or sale of any security'"). After surveying the judicial record, *Dabit* concluded that Congress intended to "incorporate" this "broad construction" when it "imported the key phrase—'in connection with the purchase or sale'—into SLUSA's core provision." 547 U.S. at 85.

What *Dabit* did *not* hold, however, was that the scope of activity encompassed by the phrase "in connection with" in SLUSA was limited to acts that could form the basis for a private securities lawsuit under section 10(b) of the 1934 Act. See *id.* at 84. The *Dabit* respondents made this argument, asserting that SLUSA did not reach their claims because they were mere holders of securities who lacked standing to bring a private securities action under federal law. See *Dabit*, 547 U.S. at 84. But this Court rejected the argument that "in connection with" must be "read narrowly to encompass (and therefore pre-empt) only those actions in which the purchaser-seller requirement of *Blue Chip Stamps* is met." *Id.* at 84–85. The Court held instead that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Ibid.* In reaching this holding, the Court reasoned that "[a] narrow reading of the statute would undercut the effectiveness of the [PSLRA] and thus run contrary to SLUSA's stated purpose," which was "to prevent certain State private securities class action lawsuits al-

leging fraud from being used to frustrate the [PSLRA's] objectives." *Id.* at 86.

Thus, following *Dabit,* a lawsuit that alleges the existence of fraud that "'coincides' with a securities transaction" by either "the plaintiff or by someone else," falls within SLUSA's scope. *Ibid.* Here, for example, the question was whether a lawsuit over a deceptive scheme to sell worthless certificates of deposit allegedly backed by covered securities involved "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. §78bb(f)(1). Under SLUSA's plain language and the guidance provided in *Dabit*, the answer is yes. And the Fifth Circuit erred in reaching the opposite conclusion.

II. Allowing plaintiffs to escape SLUSA by suing remotely connected third parties would frustrate the considered policies of Congress.

If it is allowed to stand, moreover, the Fifth Circuit's approach to SLUSA preclusion will frustrate not only the plain language of the Act but also the important policies that underlay its enactment. Among other things, the Fifth Circuit's reading would allow class action plaintiffs to assert aiding and abetting claims like the ones in this case in state court, even though such claims would clearly be barred under federal law. *Stoneridge,* 552 U.S. at 162–63. In its experience, DRI believes that the consequences of such a rule would be grave—and that they are precisely the kinds of consequences that motivated Congress to adopt SLUSA in the first place.

A. This Court and Congress have carefully circumscribed securities class actions to prevent abusive practices that expose U.S. capital markets to unacceptable risks.

As this Court has noted, "[t]he magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated." *Dabit*, 547 U.S. at 78. Since their enactment in the 1930s, the Securities Acts have "anchored" the federal regulation of these "vital elements of our economy." *Ibid.* Accordingly, this Court has adopted a "broad interpretation" of the SEC's enforcement powers under Section 10(b). *Id.* at 85.

By contrast, however, this Court has taken a narrow approach to the judicially implied private right of action. See, *e.g.*, *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 748–49 (limitations on standing); *Central Bank*, 511 U.S. at 179–80 (limitations on aiding and abetting liability where no fraud is alleged); *Stoneridge*, 552 U.S. at 165–66 (limitations on aiding and abetting liability where fraud is alleged). And when Congress passed the PSLRA in 1994, it followed the same cautious, federally oriented approach by (1) adding new limits on the private right of action, and (2) expanding and clarifying the scope of the SEC's authority to protect the integrity of the national securities markets.

There is good reason for such caution. In *Central Bank*, this Court recognized that "litigation under Rule 10b-5 presents a danger of vexatiousness different in degree and in kind from that which accompa-

nies litigation in general."[4] 511 U.S. at 188–89 (citing *Blue Chip Stamps,* 421 U.S. at 739; *Virginia Bankshares,* 501 U.S. at 1105; S. Rep. No. 73-792, at 21 (1934) (attorney's fee provision is protection against strike suits)). That is in part because "in the field of federal securities laws governing disclosure of information even a complaint which by objective standards may have very little chance of success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success," for "[t]he very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit." *Blue Chip Stamps*, 421 U.S. at 740. And the House Report on the PSLRA documented the "ways in which the class-action device was being used to injure 'the entire U.S. economy.'" *Dabit,* 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). The Report observed that "nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant in recent years," and that "these abuses resulted in extortionate settlements, chilled any discussion of issuers' future prospects, and deterred qualified individuals from serving on boards of directors." *Ibid.* (internal quotations omitted).

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[4] When evaluating attempts to extend the scope of private securities enforcement actions, this Court has long "considered [it] appropriate to examine" the "practical consequences of [such] an expansion." *Stoneridge,* 552 U.S. at 163 (citing *Virginia Bankshares, Inc.* v. *Sandberg,* 501 U.S. 1083, 1104–05 (1991); *Blue Chip Stamps,* 421 U.S., at 737).

The PSLRA responded to these abuses in Title I, which is captioned "Reduction of Abusive Litigation." Among other things, Title I limits recoverable damages, imposes new restrictions on the selection of (and compensation for) lead plaintiffs in a class action, authorizes a stay of discovery pending resolution of any motion to dismiss; and imposes heightened pleading standards. *Id.* at 81–82 (citing 15 U.S.C. § 78u-4 and *Dura Pharmaceuticals, Inc.* v. *Broudo*, 544 U.S. 336 (2005)). In short, as this Court acknowledged in *Dabit*, Congress's "effort to deter or at least quickly dispose of those suits whose nuisance value outweighs their merits placed special burdens on plaintiffs seeking to bring federal securities fraud class actions." *Ibid.*

To avoid these new burdens, the plaintiffs' bar turned its attention to state court. The number of state securities class actions filed in California alone increased fivefold in the first six months of 1996, following the enactment of the PSLRA. H.R. Rep. No. 105-640, at 10 (1998); see also SEC, OFFICE OF GENERAL COUNSEL, REPORT TO THE PRESIDENT AND THE CONGRESS ON THE FIRST YEAR OF PRACTICE UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995, at 84 (1997) (noting the increase in state securities class actions and observing that this "may reflect a migration of weaker cases to state court"); H.R. Rep. No. 105-803, at 14–15 (1998) (Conf. Rep.) (stating that plaintiffs' attorneys were attempting to "circumvent the [PSLRA's] provisions by exploiting differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural

or substantive protections against abusive suits are available").

This shift is no surprise. "'Prior to the passage of the [PSLRA], there was essentially no significant securities class action litigation brought in State court.'" *Dabit,* 547 U.S. at 88 (quoting H.R. Rep. No. 105-803, at 14 (1998) (Conf. Rep.). This was true even though state securities laws permitted private citizens to bring suit on theories that were not allowed under federal law. *Ibid.* ("[W]hile state-law holder claims were theoretically available both before and after the decision in *Blue Chip Stamps,* the actual assertion of such claims by way of class action was virtually unheard of before SLUSA was enacted; respondent and his *amici* have identified only *one* pre-SLUSA case involving a state-law class action asserting holder claims."). "To stem this 'shif[t] from Federal to State courts' and 'prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of' the [PSLRA,] * * * Congress enacted SLUSA." *Id.* at 82 (quoting SLUSA §§ 2(2), (5), 112 Stat. 3227).

SLUSA's legislative history reflects Congress's considered judgment that "lawsuits alleging violations that involve securities that are offered nationally belong in Federal court." 144 Cong. Rec. H10771 (daily ed. Oct. 13, 1998); see also H.R. Rep. No. 105-803, at 13 (1998) (Conf. Rep.) ("this legislation establishes uniform national rules for securities class action litigation involving our national capital markets"). To accomplish this objective, SLUSA targeted the private enforcement mechanism that Congress identified as most prone to abuse: class actions. To prevent SLUSA's substantive objectives from being

frustrated through artful pleading, Congress created a broad and flexible definition of "covered class actions" and freely permitted removal to federal court.[5] *Dabit*, 547 U.S. at 83 nn. 6, 8 (quoting SLUSA, 112 Stat. 3230, 3232 (codified at 15 U.S.C. § 78bb(f)(2), (5)). And, as we have already seen, when it defined the kinds of allegations covered by the law, Congress

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[5] The statute states:

> The term 'covered class action' means—
>
> (i) any single lawsuit in which—
>
> (I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or
>
> (II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or
>
> (ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—
>
> (I) damages are sought on behalf of more than 50 persons; and
>
> (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

Dabit, 547 U.S. at 83 n.8 (quoting SLUSA, 112 Stat. 3232 (codified at 15 U.S.C. § 78bb(f)(5)(B)).

used the "in connection with" language that has been broadly construed by this Court for over forty years. SLUSA, 112 Stat. 3230 (codified as amended at 15 U.S.C. § 78bb(f)(1)); see *supra* at 9. Overall, then, SLUSA reflects Congress's judgment that private securities enforcement must be carefully cabined and that the category of private lawsuits that presents the greatest risk of harming the U.S. securities markets—class actions—should be brought only under federal law.

Congress's reforms have had a positive impact: in 2011, the overall number of securities class action settlements declined by 30% to the lowest number since 1999, while the total settlement value—$3.4 billion—represented a 17% increase from prior years, largely due to the participation of institutional plaintiffs like pension funds.[6] Since small settlements are often regarded as a sign of nuisance suits, and because the participation of large institutional investors like pension funds (thought to be a bulwark against strike suits) was one of the results Congress sought to achieve in the PSLRA, these trends highlight the enduring nature of Congress's reforms. See Joseph A. Grundfest, *Why Disimply?*, 108 HARV. L. REV. 727, 742–43 (1995) (noting that settlements of less than $2 million suggested that the suits held only a nuisance value); 15 U.S.C. §§ 77z-1(a)(3)(B), 78u-4(a)(3)(B) (creating a rebuttable presumption that the class member with the largest financial interest is the most adequate lead plaintiff); H.R. Rep. No. 104-

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[6] PRICEWATERHOUSECOOPERS, THE EVER-CHANGING LANDSCAPE OF LITIGATION COMES FULL CIRCLE: 2011 SECURITIES LITIGATION STUDY 22–23 (2012), *available at* http://10b5.pwc.com/PDF/2011_securities_litigation_study_14_interactive.PDF.

50, at 34 (1995) (observing that this presumption intended to "encourage institutional investors to ta a more active role in securities class action la suits."). By opening the door to securities-relat lawsuits in state court, the Fifth Circuit's decisi threatens to undo much of what Congress acco plished in the PSLRA and SLUSA.

B. For over twenty years, this Court ar Congress have likewise recognized th private enforcement of aiding and abe ting violations is potentially harmful U.S. capital markets.

Securities class actions are not the only kind private securities lawsuits that have raised red fla for Congress and this Court. In a series of decisio over the past thirty-seven years, this Court has d termined that at least two categories of substanti claims—claims brought by holders of securities, a claims alleging liability for aiding and abetting sec rities fraud—are too uncertain and potentially ab sive to be enforced by private parties. See *Blue Ch Stamps*, 421 U.S. at 742–43; *Central Bank*, 511 U. at 167. In *Dabit* this Court concluded that SLUS was intended to cover holder claims, but in the de sion below, the Fifth Circuit wrongly concluded th SLUSA did not extend to aider and abettor action The Fifth Circuit's decision is impossible to reconci with this Court's judgment—shared by Congress- that such claims are not appropriate for private e forcement.

This Court first reached this conclusion in *Centr Bank*. "Since 1966, numerous lower courts" had he that private litigants could sue those who aided a

abetted another actor who violated the securities laws. *Central Bank*, 511 U.S. at 170. Squarely reviewing the issue for the first time, the Court concluded that private civil liability for aiding and abetting was not supported by the text of section 10(b). *Id.* at 177–78.

In reaching this result, the Court went out of its way to observe that "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets." *Id.* at 188. Securities litigation is "an area that demands certainty and predictability," but "[b]ecause •the rules for determining aiding and abetting liability are unclear, decisions are likely to be made on an ad hoc basis, offering little predictive value to those who provide services to participants in the securities business.'" *Ibid.* (internal quotations and citations omitted.). The Court concluded that "'[s]uch a shifting and highly fact-oriented disposition of the issue of who may [be liable for] a damages claim for violation of Rule 10b-5'" is not a "•satisfactory basis for a rule of liability imposed on the conduct of business transactions.'" *Ibid.* (quoting *Blue Chip Stamps,* 421 U.S. at 755, 795).

The Court identified many of the same hazards in aiding and abetting liability that led Congress to enact PSLRA's limits on securities class actions the following year. "Because of the uncertainty of the governing rules, entities subject to secondary liability as aiders and abettors may find it prudent and necessary, as a business judgment, to abandon substantial defenses and to pay settlements in order to avoid the expense and risk of going to trial." *Ibid.* "This uncertainty and excessive litigation can have ripple effects"

on "newer and smaller companies" that "may find it difficult to obtain advice from professionals"—like lawyers and auditors—who may fear "that a newer or smaller company may not survive and that business failure would generate securities litigation against the professional, among others." *Ibid.* Perversely, these "increased costs incurred by professionals because of the litigation and settlement costs under 10b-5 may be passed on to their client companies, and in turn incurred by the company's investors, the intended beneficiaries of the statute." *Ibid.* (citing Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 DUKE L.J. 945, 948–66 (1993)). Finally, the Court acknowledged that even meritless suits imposed a significant financial burden on secondary actors, noting that "[l]itigation under 10b-5 * * * requires secondary actors to expend large sums even for pretrial defense and the negotiation of settlements," which in the case of major accounting firms resulted in the expenditure of "$8 in legal fees for every $1 paid in claims." *Ibid.* (citing 138 Cong. Rec. S12605 (Aug. 12, 1992) (remarks of Sen. Sanford).

Fourteen years later, in *Stoneridge,* the Court rejected an attempt to resurrect private aider and abettor liability and affirmed that Congress, in a "specific response to *Central Bank*," had subsequently "amended the securities laws to provide for limited coverage of aiders and abettors * * * in actions brought by the SEC *but not by private parties*." *Stoneridge,* 552 U.S. at 162 (citing 15 U.S.C. § 78t(e)) (emphasis added). Recognizing private aider and abettor liability "would undermine Congress's deter-

mination that this class of defendants should be pursued by the SEC and not by private litigants," in violation of the principle that "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.'" *Id.* at 162–63 (quoting *Alexander* v. *Sandoval,* 532 U.S. 275, 290 (2001)).

Once again, the *Stoneridge* court went out of its way to identify the "practical consequences" of a contrary rule, noting that private civil liability for aiding and abetting securities fraud "would expose a new class of defendants" such as lawyers, auditors, and otherwise innocent business partners to the risk of "extensive discovery and the potential for uncertainty and disruption," which "allow[s] plaintiffs with weak claims to extort settlements from innocent companies." *Ibid.* These secondary actors would, in turn, likely pass their skyrocketing legal costs on to their clients and business partners, "rais[ing] the cost of being a publicly traded company under our law and shift[ing] securities offerings away from domestic capital markets." *Ibid.*

This Court's concerns about the negative effects of aider and abettor liability on the global competitiveness of the U.S. capital markets are as valid today as they were in 2005. One report commissioned by Senator Charles Schumer and New York City Mayor Michael Bloomberg found that "the high legal cost of doing business in the US financial services industry is of real concern to corporate executives," that "propensity toward legal action was the predominant problem," and that 85% of CEOs believed that London was preferable to New York in this regard. MCKINSEY & COMPANY, SUSTAINING NEW YORK'S AND

THE US'S GLOBAL FINANCIAL SERVICES LEADERSHIP 75 (2007).[7] And in a survey of 334 senior executives of overseas companies, one out of three companies that had considered going public in the U.S. indicated that "litigation [was] an 'extremely important' factor in their decision." THE FINANCIAL SERVICES FORUM, 2007 GLOBAL CAPITAL MARKETS SURVEY 6–8 (2007).[8] Perhaps more tellingly, the same survey showed that "nine out of 10 companies who de-listed from a U.S. exchange" from 2003 to 2007 "said that the litigation environment played some role in that decision." *Ibid.* In short, the U.S. securities markets are already losing a competitive edge because of the high costs of litigation in this country. The Fifth Circuit's decision only exacerbates this already-serious problem.

C. Allowing plaintiffs to escape SLUSA by suing remotely connected third parties in state court would frustrate Congress's intent and expose U.S. capital markets to all the risk of harm recognized in *Central Bank* and *Stoneridge*.

The Fifth Circuit's holding that the aiding and abetting claims here can proceed in state court would open the door to all of the risks and harms identified by this Court in *Central Bank* and *Stoneridge*. These include the extension of liability to auditors and lawyers who may be forced to pass their skyrocketing legal costs on to clients and thus raise the cost of participating in the U.S. capital markets. Based on its

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[7] *Available at* http://www.nyc.gov/html/om/pdf/ny_report_final.pdf.

[8] *Available at* http://www.financialservicesforum.org/images/stories/20071211_global_capital__markets_survey.pdf.

members' experience in representing lawyers and accounting firms that have been sued in securities class actions, DRI is well aware of the devastating effect that even meritless lawsuits can have on these professionals and the businesses they serve. Allowing such suits to proceed would frustrate Congress's judgment that these types of claims are best investigated by the SEC, not private parties. See 15 U.S.C. § 78t(e). It would also frustrate Congress's main goal in adopting SLUSA—namely, to keep securities class actions in federal court and subject to the strict limits imposed under the PSLRA and this Court's cases.

As this Court stated when considering the analogous question of whether SLUSA precluded holder claims not available under federal securities law, "[a] narrow reading of the statute would undercut the effectiveness of the [PSLRA] and thus run contrary to SLUSA's stated purpose, viz., 'to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives' of the [PSLRA]." *Dabit*, 547 U.S. at 86 (quoting SLUSA § 2(5), 112 Stat. 3227). SLUSA's congressional supporters regarded "differing federal and state standards of liability for nationally-traded securities" as a "danger" to be avoided, S. Rep. No. 105-182, at 3 (1998), and viewed circumventing the PSLRA by filing in state court as a serious problem. See H.R. Rep. No. 105-640, at 10 (1998). SLUSA was Congress's "solution" to this problem, and its congressional supporters believed that they were acting to "make Federal court the exclusive venue for securities fraud class action litigation." *Ibid.* Against this background, "[i]t would be odd, to say the least, if SLUSA exempted [a] particularly troublesome subset of class ac-

tions"—aiding and abetting actions—"from its preemptive sweep." *Dabit*, 547 U.S. at 86–87 & n. 12. For this reason, too, the Court should grant review and reverse the decision below.

III. The risks created by lawsuits like the ones at issue here are unnecessary because state and federal agencies already possess broad authority to investigate and prosecute aiding and abetting violations.

The allegations here show the hazards of interpreting SLUSA narrowly: one of the underlying complaints alleges that Stanford's lawyers aided and abetted securities fraud by "allegedly misrepresent[ing] *to the SEC* the Commission's ability to exercise its oversight over Stanford and SIB," and "telling *the SEC* that it could not investigate the operations of Stanford and SIB." Pet. App. at 42 (emphasis added). There is simply nothing in the text or history of SLUSA to indicate that Congress intended to permit a private party to bring a state court class action against a secondary actor based on alleged misrepresentations made to the SEC, which already has broad powers to discipline attorneys who fail to disclose material violations of the securities laws when practicing before the Commission. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 § 307, 15 U.S.C. § 7245 (2006); 17 C.F.R. § 205.3 (2011).[9] Such lawsuits are an affront to the regulatory system Congress created to police those very abus-

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[9] See also Implementation of Standards of Professional Conduct for Attorneys, 68 Fed. Reg. 6296-01 (Feb. 6, 2003), *available at* http://www.sec.gov/rules/final/33-8185.htm.

es. See, *e.g.*, *Buckman* v. *Plaintiffs' Legal Committee*, 531 U.S. 341, 347–48 (holding state claims based on alleged fraud on the FDA preempted).

Moreover, holding that SLUSA precludes aiding and abetting class actions will not leave other secondary actors who aid securities fraud unpunished. As one independent report concluded, "[t]he United States has the toughest administrative enforcement of securities law in the world." COMMITTEE ON CAPITAL MARKETS REGULATION, INTERIM REPORT 74 (2006).[10] And Congress gave the SEC express authority to pursue aiders and abettors in the PSLRA (15 U.S.C. § 78t(e)), which the SEC has used to prosecute lawyers who knowingly helped their clients to commit securities fraud. See, *e.g.*, SEC Litigation Release No. 22352, SEC Charges Attorney and Clients in Scheme to Unlawfully Sell Billions of Penny-Stock Shares (May 1, 2012) (noting that the SEC's complaint charged an attorney with violating, or aiding and abetting a violation of, Section 5 of the Securities Act).[11]

Writing in 2008, this Court observed that the SEC's civil and criminal enforcement power for secondary actors "is not toothless." *Stoneridge*, 552 U.S. at 166. This is even more true today than it was then, with the significant expansion of the SEC's enforcement authority under the recent Dodd-Frank Act. See Dodd-Frank Wall Street Reform and

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[10] *Available at* http://www.law.du.edu/images/uploads/corporate-governance/empirical-committee-capital-markets-regulation.pdf.

[11] *Available at* http://www.sec.gov/litigation/litreleases/2012/lr22352.htm.

Consumer Protection Act of 2010, Pub. L. No. 111-203, § 922(a), 124 Stat 1841 (2010); Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300 (June 13, 2011).[12] In 2011, the SEC's Division of Enforcement achieved "a record performance," filing 735 enforcement actions, opening 933 investigations, and obtaining $2.8 billion in penalties and disgorgement. SEC, PERFORMANCE AND ACCOUNTABILITY REPORT, FISCAL YEAR 2011, at 12 (2011).[13] And the SEC's new Office of the Whistleblower, created under Dodd-Frank, received 334 whistleblower tips in the first two months of its full-fledged operation. SEC, ANNUAL REPORT ON THE DODD-FRANK WHISTLEBLOWER PROGRAM, FISCAL YEAR 2011, at 5 (2011).[14] All of this federal enforcement authority is, of course, in addition to the numerous "state securities laws [that] permit state authorities to seek fines and restitution from aiders and abettors." *Stoneridge,* 552 U.S. at 166 (citing Del. Code Ann.. Tit. 6, § 7325 (2005)).

In short, the reforms in the PSLRA, SLUSA, Sarbanes-Oxley, and Dodd-Frank represent Congress's

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[12] The SEC's Director of Enforcement has noted that the Dodd-Frank whistleblower provisions may play a particularly important role in deterring aiding and abetting violations because by making it less likely that material violations will remain hidden indefinitely, they provide an added incentive for secondary actors like attorneys and auditors to thoroughly investigate any fully disclose any suspicions of fraud. See Robert S. Khuzami, Remarks to Criminal Law Group of the UJA—Federation of New York (June 1, 2011), *available at* http://www.sec.gov/news/speech/2011/spch060111rk.htm.

[13] *Available at* http://www.sec.gov/about/secpar/secpar2011.pdf.

[14] *Available at* http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf.

considered judgment that government agencies, not private class action plaintiffs, are the appropriate enforcers for the kind of securities-related fraud alleged in this case. This Court's intervention is necessary to ensure the federal courts' respect for that judgment.

CONCLUSION

The Fifth Circuit's decision below is inconsistent with the statutory language. It is also unwise and unnecessary. For these and the other reasons discussed in the petition for certiorari, this Court should grant review and reverse the decision below.

Respectfully submitted.

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JOINT APPENDIX

Supreme Court, U.S.
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Nos. 12-79, 12-86, & 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP, PETITIONER,

v.

SAMUEL TROICE, ET AL.

WILLIS OF COLORADO INC., BOWEN, MICLETTE & BRITT, INC., AND SEI INVESTMENTS COMPANY, PETITIONERS,

v.

SAMUEL TROICE, ET AL.

PROSKAUER ROSE LLP, PETITIONER,

v.

SAMUEL TROICE, ET AL.

On Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit

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Petitions for Writ of Certiorari Filed July 18, 2012
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APPENDIX A

Relevant Docket Entries
Troice v. Proskauer Rose LLP,
Case No. 3:09-cv-01600 (N.D. Tex.)

DATE FILED	ECF NO.	DOCKET TEXT
08/27/2009	1	COMPLAINT WITH JURY DEMAND against PROSKAUER ROSE LLP, Thomas V Sjoblom filed by Samuel Troice, Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd. Clerk to issue summons(es). In each Notice of Electronic Filing the filer receives, the judge assignment is indicated in the subject line, and a link to the Judges Copy Requirements is provided. The court reminds the filer that any required copy of this and future documents must be delivered to the judge, in the manner prescribed, within three business days of filing. (Filing fee $350; Receipt number 0539000000002877490) (Attachments: # 1 Exhibit 1) (Snyder, Edward) (Entered: 08/27/2009)
[DOCKET ENTRIES OMITTED]		
08/28/2009	4	AMENDED COMPLAINT

DATE FILED	ECF NO.	DOCKET TEXT
		WITH JURY DEMAND against PROSKAUER ROSE LLP, Thomas V Sjoblom filed by Samuel Troice, Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd. (Attachments: # 1 Exhibit 1) (Snyder, Edward) (Entered: 08/28/2009)
08/31/2009	5	ORDER REASSIGNING CASE. Case reassigned to Judge David C Godbey for all further proceedings. Judge Royal Furgeson no longer assigned to case. (Ordered by Judge Royal Furgeson on 8/31/2009) (twd) (Entered: 08/31/2009)
10/09/2009	6	Second AMENDED COMPLAINT WITH JURY DEMAND against PROSKAUER ROSE LLP, Thomas V Sjoblom filed by Samuel Troice, Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd. Clerk to issue summons(es). (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4) (Snyder, Edward) (Entered: 10/09/2009)
[DOCKET ENTRIES OMITTED]		

DATE FILED	ECF NO.	DOCKET TEXT
12/11/2009	29	MOTION to Dismiss and Brief in Support of Its Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint filed by Chadbourne & Parke LLP with Brief/Memorandum in Support. (Brandon, Elizabeth) (Entered: 12/11/2009)
12/11/2009	30	Appendix in Support filed by Chadbourne & Parke LLP re 29 MOTION to Dismiss and Brief in Support of Its Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint (Brandon, Elizabeth) (Entered: 12/11/2009)
12/11/2009	31	MOTION to Dismiss filed by Proskauer Rose LLP with Brief/Memorandum in Support. (Collins, Bruce) (Entered: 12/11/2009)
12/11/2009	32	AFFIDAVIT re 31 MOTION to Dismiss by Proskauer Rose LLP. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3) (Collins, Bruce) (Entered: 12/11/2009)
[DOCKET ENTRIES OMITTED]		

DATE FILED	ECF NO.	DOCKET TEXT
12/11/2009	36	MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint filed by Thomas V Sjoblom (Krystinik, Jay) (Entered: 12/11/2009)
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12/18/2009	44	MOTION to Dismiss Plaintiffs' Second Amended Complaint filed by P Mauricio Alvarado with Brief/Memorandum in Support. (Attachments: # 1 Text of Proposed Order) (Gerger, David) (Entered: 12/18/2009)
[DOCKET ENTRIES OMITTED]		
02/01/2010	50	RESPONSE filed by Samuel Troice, Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd re: 31 MOTION to Dismiss, 36 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint, 44 MOTION to Dismiss Plaintiffs' Second Amended Complaint, 29 MOTION to Dismiss and Brief in Support of Its Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint (Attachments: # 1 Text of Proposed Order)

DATE FILED	ECF NO.	DOCKET TEXT
		(Snyder, Edward) (Entered: 02/01/2010)
02/01/2010	51	Appendix in Support filed by Samuel Troice, Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd re 50 Response/Objection, (Attachments: # 1 Declaration of Edward C. Snyder, # 2 Exhibit A-B) (Snyder, Edward) (Entered: 02/01/2010)
02/02/2010	52	Joint STATUS REPORT in Response to Order Requiring Status and Scheduling Conference filed by Samuel Troice, Horacio Mendez, P Mauricio Alvarado, Chadbourne & Parke LLP, Annalisa Mendez, Punga Punga Financial, Ltd, Proskauer Rose LLP, Thomas V Sjoblom. (Burger, Neil) (Entered: 02/02/2010)
[DOCKET ENTRIES OMITTED]		
03/15/2010	63	REPLY filed by Chadbourne & Parke LLP re 29 MOTION to Dismiss. (Hirschman, Karen) Modified on 3/16/2010 (axm). (Entered: 03/15/2010)
03/15/2010	64	REPLY filed by Proskauer Rose LLP re: 31 MOTION to Dismiss

DATE FILED	ECF NO.	DOCKET TEXT
		(Collins, Bruce) (Entered: 03/15/2010)
03/15/2010		REPLY filed by Chadbourne & Parke LLP re: 29 MOTION to Dismiss. (see doc 63 for image) (axm) (Entered: 03/16/2010)
03/16/2010	65	Brief/Memorandum in Support filed by Thomas V Sjoblom re 36 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint (Krystinik, Jay) (Entered: 03/16/2010)
[DOCKET ENTRY OMITTED]		
03/16/2010		REPLY Brief filed by Thomas V Sjoblom in further support of 36 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint. (See document #65 for image.) (skt) (Entered: 03/17/2010)
[DOCKET ENTRY OMITTED]		
03/17/2010	68	REPLY filed by P Mauricio Alvarado re: 44 MOTION to Dismiss Plaintiffs' Second Amended Complaint (Gerger, David) (Entered: 03/17/2010)
[DOCKET ENTRY OMITTED]		
04/26/2010	70	Plaintiffs' MOTION to Compel Initial Disclosures filed by

DATE FILED	ECF NO.	DOCKET TEXT
		Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Proposed Order) (Snyder, Edward) (Entered: 04/26/2010)
[DOCKET ENTRY OMITTED]		
05/17/2010	72	MOTION to Stay Discovery Pending the Court's Consideration of Defendants' Motion to Dismiss and Response to Plaintiffs' Motion to Compel Initial Disclosures filed by P Mauricio Alvarado (Attachments: # 1 Proposed Order) (Gerger, David) (Entered: 05/17/2010)
05/17/2010	73	RESPONSE filed by Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom re: 70 MOTION to Compel (PLAINTIFF'S MOTION TO COMPEL INITIAL DISCLOSURES) (Burger, Neil) (Entered: 05/17/2010)
05/17/2010	74	Brief/Memorandum in Support filed by Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom re 73 Response/Objection to Motion

DATE FILED	ECF NO.	DOCKET TEXT
		to Compel and in Support of Cross-Motion to Stay Discovery (Burger, Neil) (Entered: 05/17/2010)
05/17/2010		Cross-motion to stay discovery pending resolution of their motions to dismiss filed by Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom. (see #74 for image) (svc) (Entered: 07/21/2010)
05/27/2010	75	REPLY filed by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice re: 72 MOTION to Stay Discovery Pending the Court's Consideration of Defendants' Motion to Dismiss and Response to Plaintiffs' Motion to Compel Initial Disclosures, 70 MOTION to Compel (PLAINTIFF'S MOTION TO COMPEL INITIAL DISCLOSURES) (Attachments: # 1 Proposed Order) (Snyder, Edward) (Entered: 05/27/2010)
05/27/2010		RESPONSE filed by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice re: 72 MOTION to Stay Discovery Pending the

DATE FILED	ECF NO.	DOCKET TEXT
		Court's Consideration of Defendants' Motion to Dismiss and Response to Plaintiffs' Motion to Compel Initial Disclosures (see doc. 75 for image) (tln) (Entered: 05/28/2010)
06/10/2010	76	REPLY filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom re: 72 MOTION to Stay Discovery Pending the Court's Consideration of Defendants' Motion to Dismiss and Response to Plaintiffs' Motion to Compel Initial Disclosures (Burger, Neil) (Entered: 06/10/2010)
[DOCKET ENTRIES OMITTED]		
07/06/2010	81	NOTICE of Supplemental Authority filed by Proskauer Rose LLP (Attachments: # 1 Exhibit(s) Romano v Kazacos) (Burger, Neil) (Entered: 07/06/2010)
[DOCKET ENTRIES OMITTED]		
07/19/2010	84	ORDER denying 70 Motion to Compel; granting 74 Cross Motion to Stay discovery. (see Order) (Ordered by Judge

DATE FILED	ECF NO.	DOCKET TEXT
		David C Godbey on 7/19/2010) (ykp) (Entered: 07/21/2010)
[DOCKET ENTRIES OMITTED]		
09/30/2010	86	STATUS REPORT Examiner's Report No. 3 filed by John J Little. (jkm) (Entered: 10/13/2010)
[DOCKET ENTRIES OMITTED]		
05/10/2011	89	ORDER: Any party that has briefed SLUSA issues in a case proceeding under this MDL may call the Court's attention to that briefing by filing an appropriate notice in Roland within thirty (30) days of the date of this Order. It is unnecessary for the parties in Civil Action No. 3:09-CV-1600-N to provide such notice. Any other party desiring to apprise the Court of its views should file, within thirty (30) days of the date of this Order, a motion for leave to file an amicus brief, together with a copy of such proposed brief not to exceed twenty-five (25) pages. Motions for leave should indicate how the partys legal position differs from those of the parties in Roland and Troice v.

DATE FILED	ECF NO.	DOCKET TEXT
		Proskauer. (Ordered by Judge David C Godbey on 5/10/2011) (jkm) (Entered: 05/11/2011)
05/31/2011	90	NOTICE of Supplemental Authority re: 31 MOTION to Dismiss filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C) (Burger, Neil) (Entered: 05/31/2011)
09/14/2011	91	MOTION to Stay Case Pending Appeal of SLUSA Decision in Related Case filed by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Proposed Order) (Snyder, Edward) (Entered: 09/14/2011)
[DOCKET ENTRY OMITTED]		
10/05/2011	93	RESPONSE filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom re: 91 MOTION to Stay Case Pending Appeal of SLUSA Decision in Related Case (Burger, Neil) (Entered: 10/05/2011)
10/12/2011	94	REPLY filed by Annalisa

DATE FILED	ECF NO.	DOCKET TEXT
		Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice re: 91 MOTION to Stay Case Pending Appeal of SLUSA Decision in Related Case (Snyder, Edward) (Entered: 10/12/2011)
10/20/2011	95	NOTICE of Filing Proposed Order re: 31 MOTION to Dismiss, 36 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint, 44 MOTION to Dismiss Plaintiffs' Second Amended Complaint, 29 MOTION to Dismiss and Brief in Support of Its Motion to Dismiss Plaintiffs' Second Amended Class Action Complaint filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom (Attachments: # 1 Proposed Order) (Burger, Neil) (Entered: 10/20/2011)
10/21/2011	96	ORDER granting 29 , 31 , 36 , 44 Defendants' Motions to Dismiss and denying 91 Motion to Stay Case pending Appeal of SLUSA decison in related case as moot. (Ordered by Judge

DATE FILED	ECF NO.	DOCKET TEXT
		David C Godbey on 10/21/2011) (jrb) (Entered: 10/21/2011)
10/25/2011	97	NOTICE OF APPEAL to the Fifth Circuit as to 96 Order on Motion to Dismiss,,,, Order on Motion to Stay by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice. Filing fee $455, receipt number 0539-4200008. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. (Valdespino, Edward) (Entered: 10/25/2011)
10/28/2011	98	AMENDED NOTICE OF APPEAL to the Fifth Circuit as to 96 Order on Motions to Dismiss,and Order on Motion to Stay by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice. Amendment to 97 Notice of Appeal. (Valdespino, Edward) Modified on 10/31/2011 (svc). (Entered: 10/28/2011)
11/04/2011		USCA Case Number 11-11031 for 97 Notice of Appeal, filed by Horacio Mendez, Annalisa

DATE FILED	ECF NO.	DOCKET TEXT
		Mendez, Punga Punga Financial, Ltd, Samuel Troice. (svc) (Entered: 11/04/2011)
11/04/2011	99	Transcript Order Form: re 97 Notice of Appeal, transcript not requested. (Valdespino, Edward) (Entered: 11/04/2011)
11/07/2011		Record on Appeal for USCA5 11-11031 (related to 97 appeal): Record consisting of: 4 ECF electronic record, certified to USCA. To request a copy of the record (on disk or on paper), contact the appeals deputy in advance to arrange delivery. (svc) (Entered: 11/07/2011)
11/18/2011		Record on Appeal for USCA5 11-11031 (related to 97 appeal): transmitted to Edward F. Valdespino Strasburger & Price, LLP on disk only by pick up. (svc) (Entered: 11/18/2011)
11/18/2011	100	Received letter from USCA5 re: Consolidation of appeals. (svc) (Entered: 11/22/2011)
12/27/2011		Record on Appeal for USCA5 11-11031 (related to 97 appeal): transmitted to Carrington Coleman Sloman & Blumenthal on disk only by hand delivery. (svc) (Entered: 12/27/2011)

DATE FILED	ECF NO.	DOCKET TEXT
01/04/2012	101	NOTICE ADVISORY TO THE COURT FROM CASTILO SNYDER P.C. REGARDING FILING OF INDIVIDUAL STATE COURT LAWSUITS filed by Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Attachment, # 2 Attachment Exhibit A) (Snyder, Edward) (Entered: 01/04/2012)
01/04/2012	102	Received letter from USCA5 regarding removal of Mark Manela as an appellee. (svc) (Entered: 01/05/2012)
01/18/2012	103	Record on Appeal for USCA5 11-11031 (related to 97 appeal): Record consisting of: 4 Volume(s) ECF electronic record, transmitted to USCA5. Shipped: Federal Express 296232215006231, 296232215006224 (svc) (Entered: 01/18/2012)
01/24/2012	104	Received letter from USCA5 re: revised caption (svc) (Entered: 01/26/2012)
05/09/2012	105	Opinion of USCA (certified copy) in accordance with USCA judgment re 97 Notice of

DATE FILED	ECF NO.	DOCKET TEXT
		Appeal, filed by Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd, Samuel Troice. (svc) (Entered: 05/11/2012)
05/09/2012	106	JUDGMENT/MANDATE of USCA as to 97 Notice of Appeal, filed by Horacio Mendez, Annalisa Mendez, Punga Punga Financial, Ltd, Samuel Troice. Case remanded to the district court for further proceedings. Issued as Mandate: 4/27/12. Electronic copy of the record has been recycled (Attachments: # 1 Letter) (svc) (Entered: 05/11/2012)
[DOCKET ENTRIES OMITTED]		
09/24/2012	113	ORDER: Pursuant to 28 U.S.C. § 636, it is ordered that all cases within the In re Stanford Entities Securities Litigation multidistrict litigation, other than Securities Exchange Commission v. Stanford, et al., Civil Action No. 3:09-0298-N, are hereby referred to the Hon. E. Scott Frost, United States Magistrate Judge, for hearing and determination. See Order for specifics. (Ordered by Judge

DATE FILED	ECF NO.	DOCKET TEXT
		David C Godbey on 9/24/2012) (gmg) (Entered: 09/26/2012)
[DOCKET ENTRY OMITTED]		
02/11/2013	115	Received letter from USCA5 Re: Supreme Court granted certiorari (svc) (Entered: 02/12/2013)
[DOCKET ENTRY OMITTED]		

APPENDIX B

Relevant Docket Entries
Troice v. Willis of Colorado,
Case No. 3:09-cv-01274 (N.D. Tex.)

DATE FILED	ECF NO.	DOCKET TEXT
07/02/2009	1	COMPLAINT WITH JURY DEMAND (CLASS ACTION) against all defendants filed by Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd. Clerk to issue summons(es). (Filing fee $350; Receipt number 053900000000002797409) (Attachments: # 1 Exhibit 1-5, # 2 Civil Cover Sheet) (Snyder, Edward) (Entered: 07/02/2009)
[DOCKET ENTRIES OMITTED]		
08/11/2009		Answer due from Willis of Colorado, Inc. on 9/14/2009. (skt) (Entered: 08/13/2009)
08/12/2009	13	AMENDED COMPLAINT (FIRST) against Willis of Colorado, Inc., Willis Group Holdings, Ltd, Amy S Baranoucky, Bowen, Miclette & Britt, Inc. filed by Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd. (Attachments: # 1 Exhibit 1-6) (Snyder,

DATE FILED	ECF NO.	DOCKET TEXT
		Edward) (Entered: 08/12/2009)
[DOCKET ENTRY OMITTED]		
08/19/2009	16	Court Request for Recusal: Judge Sam A Lindsay recused. Pursuant to instruction in Special Order 3-249, the Clerk has randomly reassigned the case to Judge David C Godbey for all further proceedings. Future filings should indicate the case number as: 3:09-cv-1274-N. (caw) (Entered: 08/21/2009)
08/28/2009	17	Agreed MOTION to Stay Proceedings filed by Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd, Willis of Colorado, Inc., Robert S Winter, Bowen, Miclette & Britt, Inc. (Attachments: # 1 Proposed Order) (Hartmann, Michelle) (Entered: 08/28/2009)
[DOCKET ENTRIES OMITTED]		
10/29/2009	22	MOTION to Stay or Abate Proceedings filed by Willis of Colorado, Inc., Bowen, Miclette & Britt, Inc. with Brief/Memorandum in Support. (Attachments: # 1 Text of Proposed Order)

DATE FILED	ECF NO.	DOCKET TEXT
		(Ostolaza, Yvette) (Entered: 10/29/2009)
10/29/2009	23	Appendix in Support filed by Willis of Colorado, Inc., Bowen, Miclette & Britt, Inc. re 22 MOTION to Stay or Abate Proceedings (Attachments: # 1 App. 1-11, # 2 App. 12-58, # 3 App. 59-100) (Ostolaza, Yvette) (Entered: 10/29/2009)
11/18/2009	24	RESPONSE filed by Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd re: 22 MOTION to Stay or Abate Proceedings (Valdespino, Edward) (Entered: 11/18/2009)
12/03/2009	25	REPLY filed by Willis of Colorado, Inc., Bowen, Miclette & Britt, Inc. re: 22 MOTION to Stay or Abate Proceedings (Ostolaza, Yvette) (Entered: 12/03/2009)
12/03/2009	26	Supplemental Appendix in Support filed by Willis of Colorado Inc, Bowen, Miclette & Britt Inc re 22 MOTION to Stay or Abate Proceedings (Attachments: # 1 App. 101-124) (Ostolaza, Yvette) (Entered: 12/03/2009)

DATE FILED	ECF NO.	DOCKET TEXT
[DOCKET ENTRY OMITTED]		
12/31/2009	28	AMENDED COMPLAINT WITH JURY DEMAND (PLAINTIFFS SECOND AMENDED CLASS ACTION COMPLAINT) against all defendants filed by Villa Marino Promotora, Daniel Gomez Ferreiro, Manuel Canabal, Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd. (Attachments: # 1 Exhibit 1-6) (Snyder, Edward) (Entered: 12/31/2009)
01/21/2010	29	MOTION to Stay or Abate Related Proceedings filed by Willis of Colorado Inc, Bowen, Miclette & Britt Inc (Attachments: # 1 Text of Proposed Order) (Hartmann, Michelle) (Entered: 01/21/2010)
01/21/2010	30	Appendix in Support filed by Willis of Colorado Inc, Bowen, Miclette & Britt Inc re 29 MOTION to Stay or Abate Related Proceedings (Attachments: # 1 App. 1-14) (Hartmann, Michelle) (Entered: 01/21/2010)
01/26/2010	31	RESPONSE filed by Promotora

DATE FILED	ECF NO.	DOCKET TEXT
		Villa Marino, CA, Daniel Gomez Ferreiro, Manuel Canabal, Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd re: 29 MOTION to Stay or Abate Related Proceedings (Foley, Nicholas) (Entered: 01/26/2010)
[DOCKET ENTRY OMITTED]		
01/28/2010	33	REPLY filed by Willis of Colorado Inc, Bowen, Miclette & Britt Inc re: 29 MOTION to Stay or Abate Related Proceedings (Ostolaza, Yvette) (Entered: 01/28/2010)
02/02/2010	34	ORDER denying 29 MOTION to Stay or Abate Proceedings. However, the Court grants Defendants a two-week extension to answer, move, or otherwise respond to Plaintiffs' second amended complaint. Defendants' new deadline to respond to the second amended complaint will be 2/25/2010. (See Order) (Ordered by Judge David C Godbey on 2/2/2010) (skt) (Entered: 02/02/2010)
[DOCKET ENTRIES OMITTED]		
02/25/2010	37	MOTION to Dismiss for Lack

DATE FILED	ECF NO.	DOCKET TEXT
		of Jurisdiction filed by Amy S Baranoucky with Brief/Memorandum in Support. (Attachments: # 1 Brief In Support, # 2 Appendix) (Manela, Mark) (Entered: 02/25/2010)
[DOCKET ENTRY OMITTED]		
02/25/2010	39	MOTION to Dismiss Pursuant to Rules 9(B) and 12(B)(6) filed by Robert S Winter (Attachments: # 1 Text of Proposed Order Order Granting R. Winter's Motion to Dismiss Pursuant to Rules 9(B) and 12(B)(6)) (Hamel, Charles) (Entered: 02/25/2010)
02/25/2010	40	MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint for Lack of Personal Jurisdiction filed by Willis Group Holdings, Ltd (Attachments: # 1 Proposed Order) (Ostolaza, Yvette) (Entered: 02/25/2010)
02/25/2010	41	Brief/Memorandum in Support filed by Willis Group Holdings, Ltd re 40 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint for Lack of Personal Jurisdiction

DATE FILED	ECF NO.	DOCKET TEXT
		(Ostolaza, Yvette) (Entered: 02/25/2010)
02/25/2010	42	Appendix in Support filed by Willis Group Holdings, Ltd re 40 MOTION to Dismiss Plaintiff's Second Amended Class Action Complaint for Lack of Personal Jurisdiction (Ostolaza, Yvette) (Entered: 02/25/2010)
[DOCKET ENTRY OMITTED]		
02/25/2010	44	MOTION to Dismiss Plaintiffs' Second Amended Class Action Complaint filed by Willis of Colorado Inc (Attachments: # 1 Proposed Order) (Ostolaza, Yvette) (Entered: 02/25/2010)
02/25/2010	45	Brief/Memorandum in Support filed by Willis of Colorado Inc re 44 MOTION to Dismiss Plaintiffs' Second Amended Class Action Complaint (Ostolaza, Yvette) (Entered: 02/25/2010)
02/25/2010	46	Appendix in Support filed by Willis of Colorado Inc re 44 MOTION to Dismiss Plaintiffs' Second Amended Class Action Complaint (Ostolaza, Yvette) (Entered: 02/25/2010)
02/25/2010	47	MOTION to Dismiss Pursuant

DATE FILED	ECF NO.	DOCKET TEXT
		to Rules 9(B) and 12(B)(6) filed by Bowen, Miclette & Britt Inc (Foster, Bradley) (Entered: 02/25/2010)
02/25/2010	48	Brief/Memorandum in Support filed by Bowen, Miclette & Britt Inc re 47 MOTION to Dismiss Pursuant to Rules 9(B) and 12(B)(6) (Foster, Bradley) (Entered: 02/25/2010)
[DOCKET ENTRIES OMITTED]		
03/08/2010	54	Opposed MOTION For Leave to Conduct Discovery on Issues of Personal Jurisdiction, Alter Ego and Agency and Brief in Support thereof filed by Promotora Villa Marino, CA, Daniel Gomez Ferreiro, Manuel Canabal, Samuel Troice, Martha Diaz, Paula Gilly-Flores, Punga Punga Financial, Ltd (Attachments: # 1 Appendix, # 2 Exhibit, # 3 Text of Proposed Order) (Snyder, Edward) Modified on 3/30/2010 (skt). (Entered: 03/08/2010)
[DOCKET ENTRIES OMITTED]		
03/29/2010	58	RESPONSE filed by Willis Group Holdings, Ltd re: 54 Opposed MOTION For Leave

DATE FILED	ECF NO.	DOCKET TEXT
		to Conduct Discovery on Issues of Personal Jurisdiction, Alter Ego and Agency (Attachments: # 1 Text of Proposed Order) (Ostolaza, Yvette) (Entered: 03/29/2010)
03/29/2010	59	Appendix in Support filed by Willis Group Holdings, Ltd re 58 Response/Objection to Plaintiffs' Opposed Motion for Leave to Conduct Discovery on Issues of Personal Jurisdiction, Alter Ego and Agency (Attachments: # 1 App. 1-13, # 2 Appendix App. 14-57) (Ostolaza, Yvette) (Entered: 03/29/2010)
03/29/2010	60	RESPONSE filed by Amy S Baranoucky re: 54 MOTION FOR LEAVE TO CONDUCT DISCOVERY ON ISSUES OF PERSONAL JURISDICTION, ALTER EGO AND AGENCY (Attachments: # 1 Brief In Support, # 2 Text of Proposed Order) (Manela, Mark) (Entered: 03/29/2010)
04/12/2010	61	REPLY filed by Promotora Villa Marino, CA, Daniel Gomez Ferreiro, Manuel Canabal, Samuel Troice, Martha Diaz, Paula Gilly-

DATE FILED	ECF NO.	DOCKET TEXT
		Flores, Punga Punga Financial, Ltd re: 60 Response/Objection, 58 Response/Objection (Snyder, Edward) (Entered: 04/12/2010)
[DOCKET ENTRIES OMITTED]		
05/24/2010	66	Opposed MOTION for Leave to File Amended Complaint filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Proposed Order, # 2 Exhibit(s) A). Party Willis Ltd. added. (Snyder, Edward) (Entered: 05/24/2010)
05/28/2010	67	MOTION for Leave to File Their Response to Defendants Motions to Dismiss Plaintiffs' Second Amended Complaint with proposed Order filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Proposed Order) (Valdespino, Edward) (Entered: 05/28/2010)

DATE FILED	ECF NO.	DOCKET TEXT
[DOCKET ENTRIES OMITTED]		
06/09/2010	73	RESPONSE filed by Bowen, Miclette & Britt Inc, Willis Group Holdings, Ltd, Willis of Colorado Inc re: 66 MOTION for Leave to File Amended Complaint, 67 MOTION for Leave to File Their Response to Defendants Motions to Dismiss Plaintiffs' Second Amended Complaint. (Attachments: # 1 Proposed Order) (Ostolaza, Yvette) (Entered: 06/09/2010)
06/09/2010	74	RESPONSE filed by Amy S Baranoucky re: 66 MOTION for Leave to File Amended Complaint, 67 MOTION for Leave to File Their Response to Defendants Motions to Dismiss Plaintiffs' Second Amended Complaint with proposed Order (Attachments: # 1 Proposed Order) (Manela, Mark) (Entered: 06/09/2010)
06/09/2010	75	Joinder Response to 66 Opposed MOTION for Leave to File Amended Complaint filed by Robert S Winter (Attachments: # 1 Proposed Order Proposed Order) (Hamel, Charles) Modified on

DATE FILED	ECF NO.	DOCKET TEXT
		6/11/2010 (gmg). (Entered: 06/09/2010)
06/10/2010	76	REPLY filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice re: 75 MOTION to Join In Memorandum of Willis Group Holdings, et al., 73 Response/Objection, 74 Response/Objection, (Buncher, Douglas) (Entered: 06/10/2010)
06/11/2010	77	ORDER granting 67 MOTION for Leave to File Their Response to Defendants Motions to Dismiss Plaintiffs' Second Amended Complaint. (See Order) (Ordered by Judge David C Godbey on 6/11/2010) (skt) (Entered: 06/11/2010)
[DOCKET ENTRIES OMITTED]		
03/29/2011	113	ORDER granting 66 Opposed Motion for Leave to File Amended Complaint and orders the Plaintiffs to file their amended complaint within three (3) days of the date of this Order. (Ordered by Judge David C Godbey on

DATE FILED	ECF NO.	DOCKET TEXT
		3/29/2011) (mfw) (Entered: 03/30/2011)
[DOCKET ENTRY OMITTED]		
04/01/2011	115	THIRD AMENDED CLASS ACTION COMPLAINT WITH JURY DEMAND against All Defendants filed by Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Martha Diaz, Punga Punga Financial, Ltd, Samuel Troice, Manuel Canabal, Willis Ltd. (Attachments: # 1 Exhibit(s) 1-6) (Snyder, Edward) (Entered: 04/01/2011)
[DOCKET ENTRIES OMITTED]		
04/18/2011	118	NOTICE - Letter re: Insurance Letter Cases filed by Bowen, Miclette & Britt Inc, Willis of Colorado Inc (Hartmann, Michelle) (Entered: 04/18/2011)
04/19/2011	119	RESPONSE filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice re: 118 Notice (Other) (Snyder, Edward) (Entered: 04/19/2011)

DATE FILED	ECF NO.	DOCKET TEXT
[DOCKET ENTRIES OMITTED]		
05/02/2011	123	MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint filed by Willis Ltd, Willis of Colorado Inc (Attachments: # 1 Proposed Order) (Ostolaza, Yvette) (Entered: 05/02/2011)
05/02/2011	124	MOTION to Join BMB's Motion to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion to Stay filed by Robert S Winter (Hamel, Charles) (Entered: 05/02/2011)
05/02/2011	125	Brief/Memorandum in Support filed by Willis Ltd, Willis of Colorado Inc re 123 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint (Ostolaza, Yvette) (Entered: 05/02/2011)
05/02/2011	126	Appendix in Support filed by Willis Ltd, Willis of Colorado Inc re 123 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint (Attachments: # 1 App. 1-65) (Ostolaza, Yvette) (Entered: 05/02/2011)

DATE FILED	ECF NO.	DOCKET TEXT
05/02/2011	127	MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion To Stay filed by Bowen, Miclette & Britt Inc (Foster, Bradley). Added MOTION to Stay on 5/3/2011 (mfw). (Entered: 05/02/2011)
05/02/2011	128	Brief/Memorandum in Support filed by Bowen, Miclette & Britt Inc re 127 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion To Stay (Foster, Bradley) (Entered: 05/02/2011)
05/02/2011	129	Appendix in Support filed by Bowen, Miclette & Britt Inc re 127 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion To Stay, 128 Brief/Memorandum in Support of Motion (Attachments: # 1 Exhibit(s) A) (Foster, Bradley) (Entered: 05/02/2011)
[DOCKET ENTRIES OMITTED]		
05/10/2011	132	ORDER: Any party that has briefed SLUSA issues in a case proceeding under this MDL may call the Court's attention

DATE FILED	ECF NO.	DOCKET TEXT
		to that briefing by filing an appropriate notice in Roland within thirty (30) days of the date of this Order. It is unnecessary for the parties in Civil Action No. 3:09-CV-1600-N to provide such notice. Any other party desiring to apprise the Court of its views should file, within thirty (30) days of the date of this Order, a motion for leave to file an amicus brief, together with a copy of such proposed brief not to exceed twenty-five (25) pages. Motions for leave should indicate how the partys legal position differs from those of the parties in Roland and Troice v. Proskauer. (Ordered by Judge David C Godbey on 5/10/2011) (jkm) (Entered: 05/11/2011)
[DOCKET ENTRIES OMITTED]		
06/01/2011	135	RESPONSE filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice re: 127 MOTION to Dismiss Plaintiffs' Third Amended

DATE FILED	ECF NO.	DOCKET TEXT
		Class Action Complaint and Motion To Stay (Attachments: # 1 Proposed Order) (Valdespino, Edward) (Entered: 06/01/2011)
[DOCKET ENTRY OMITTED]		
06/01/2011	137	RESPONSE filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice re: 123 and 127 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion To Stay (Attachments: # 1 Proposed Order) (Valdespino, Edward) (Entered: 06/01/2011)
06/01/2011	138	Brief/Memorandum in Support filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice re 137 RESPONSE (Valdespino, Edward) (Entered: 06/01/2011)
06/09/2011	139	NOTICE of Filing of Letter in Roland V. Green filed by Bowen, Miclette & Britt Inc

DATE FILED	ECF NO.	DOCKET TEXT
		(Attachments: # 1 Exhibit(s) 1) (Foster, Bradley) (Entered: 06/09/2011)
[DOCKET ENTRIES OMITTED]		
07/01/2011	143	REPLY filed by Willis Ltd, Willis of Colorado Inc re: 123 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint (Ostolaza, Yvette) (Entered: 07/01/2011)
[DOCKET ENTRY OMITTED]		
07/01/2011	145	REPLY filed by Bowen, Miclette & Britt Inc re: 127 MOTION to Dismiss Plaintiffs' Third Amended Class Action Complaint and Motion To Stay (Foster, Bradley) M (Entered: 07/01/2011)
07/01/2011	146	NOTICE of Joinder in Reply Brief of Bowen, Miclette re: 145 Reply filed by Robert S Winter (Nesbitt, Paul) (Entered: 07/01/2011)
[DOCKET ENTRY OMITTED]		
09/14/2011	148	MOTION to Stay Case Pending Appeal of SLUSA Decision in Related Case filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora

DATE FILED	ECF NO.	DOCKET TEXT
		Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice (Attachments: # 1 Proposed Order) (Snyder, Edward) (Entered: 09/14/2011)
[DOCKET ENTRIES OMITTED]		
10/05/2011	150	RESPONSE filed by Bowen, Miclette & Britt Inc, Willis of Colorado Inc re: 148 MOTION to Stay Case Pending Appeal of SLUSA Decision in Related Case (Hartmann, Michelle) (Entered: 10/05/2011)
10/05/2011	151	NOTICE of Joinder of Defendant Robert S. Winter re: 150 Response/Objection filed by Robert S Winter (Nesbitt, Paul) (Entered: 10/05/2011)
10/25/2011	152	NOTICE of Filing of Proposed Final Order Dismissing Case filed by Amy S Baranoucky, Bowen, Miclette & Britt Inc, Willis Group Holdings, Ltd, Willis Ltd, Willis of Colorado Inc, Robert S Winter (Hartmann, Michelle) (Entered: 10/25/2011)
10/26/2011	153	NOTICE OF DISMISSAL (PLAINTIFFS NOTICE OF VOLUNTARY DISMISSAL OF INDIVIDUAL CLAIMS

DATE FILED	ECF NO.	DOCKET TEXT
		WITHOUT PREJUDICE) filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice (Snyder, Edward) (Entered: 10/26/2011)
10/26/2011	154	NOTICE OF DISMISSAL (PLAINTIFFS NOTICE OF VOLUNTARY DISMISSAL OF INDIVIDUAL CLAIMS WITHOUT PREJUDICE) filed by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice (Snyder, Edward) (Entered: 10/26/2011)
10/27/2011	155	ORDER granting 123 , 124 , 127 Motions to Dismiss; denying as moot 37 , 40 , 101 , 106 , 148 and 153 . (Ordered by Judge David C Godbey on 10/27/2011) (jrb) (Entered: 10/27/2011)
10/27/2011	156	FINAL JUDGMENT: It is ordered that Plaintiffs take nothing by their claims against Defendants, that those class claims are dismissed with

DATE FILED	ECF NO.	DOCKET TEXT
		prejudice, and that those individual claims are dismissed without prejudice. Court costs are taxed against Plaintiffs. All relief not expressly granted is denied. (Ordered by Judge David C Godbey on 10/27/2011) (jrb) (Entered: 10/27/2011)
10/28/2011	157	NOTICE OF APPEAL to the Fifth Circuit as to 155 ORDER granting 123 , 124 , 127 Motions to Dismiss; denying as moot 37 , 40 , 101 , 106 , 148 and 153 156 Judgment, by Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice. Filing fee $455, receipt number 0539-4207416. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. (Valdespino, Edward) Modified on 10/31/2011 (svc). (Entered: 10/28/2011)
11/03/2011	158	AMENDED NOTICE OF APPEAL by Manuel Canabal,

DATE FILED	ECF NO.	DOCKET TEXT
		Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Samuel Troice. Amendment to 157 Notice of Appeal correction of names. (Valdespino, Edward) Modified on 11/4/2011 (svc). (Entered: 11/03/2011)
11/07/2011		USCA Case Number 11-11048 for 157 , {158] Notice of Appeal filed by Daniel Gomez Ferreiro, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Manuel Canabal, Paula Gilly-Flores, Martha Diaz, Samuel Troice. (svc) (Entered: 11/07/2011)
11/07/2011	159	Transcript Order Form: re 157 Notice of Appeal,, transcript not requested. (Valdespino, Edward) (Entered: 11/07/2011)
11/08/2011		Record on Appeal for USCA5 11-11048 (related to 157 appeal): Record consisting of: 10 ECF electronic record, 1 Volume(s) electronic transcript, certified to USCA. To request a copy of the record (on disk or on paper), contact the appeals deputy in advance to arrange delivery. (svc)

DATE FILED	ECF NO.	DOCKET TEXT
		(Entered: 11/08/2011)
11/18/2011		Record on Appeal for USCA5 11-11048 (related to 157 appeal): transmitted to Edward F. Valdespino Strasburger & Price, LLP on disk only by pick up. (Entered: 11/18/2011)
11/18/2011		Record on Appeal for USCA5 11-11048 (related to 157 appeal): transmitted to Andrews Kurth LLP on disk only by mail. (svc) (Entered: 11/18/2011)
11/18/2011	160	Received letter from USCA5 re: Consolidation of appeals. (svc) (Entered: 11/22/2011)
12/06/2011		Record on Appeal for USCA5 11-11048 (related to 157 appeal): transmitted to Weil Gotshal & Manges on disk only by mail. (svc) (Entered: 12/06/2011)
01/04/2012	161	Received letter from USCA5 regarding removal of Mark Manela as an appellee. (svc) (Entered: 01/05/2012)
01/18/2012	162	Record on Appeal for USCA5 11-11048 (related to 157 appeal): Record consisting of:

DATE FILED	ECF NO.	DOCKET TEXT
		10 Volume(s) ECF electronic record, 1 Volume(s) electronic transcript, transmitted to USCA5. Shipped: Federal Express 296232215006231, 296232215006224 (svc) (Entered: 01/18/2012)
01/24/2012	163	Received letter from USCA5 re: revised caption (svc) (Entered: 01/26/2012)
05/09/2012	164	Opinion of USCA (certified copy) in accordance with USCA judgment re 157 Notice of Appeal,, filed by Daniel Gomez Ferreiro, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Manuel Canabal, Paula Gilly-Flores, Martha Diaz, Samuel Troice. (svc) (Entered: 05/11/2012)
05/09/2012	165	JUDGMENT/MANDATE of USCA as to 157 Notice of Appeal,, filed by Daniel Gomez Ferreiro, Promotora Villa Marino, CA, Punga Punga Financial, Ltd, Manuel Canabal, Paula Gilly-Flores, Martha Diaz, Samuel Troice. Case remanded to the district court for further proceedings. Issued as Mandate: 4/27/12. The electronic copy of the

DATE FILED	ECF NO.	DOCKET TEXT
		record has been recycled (Attachments: # 1 Letter) (svc) (Entered: 05/11/2012)
05/09/2012	166	USCA5 Bill of Costs (svc) (Entered: 05/11/2012)
[DOCKET ENTRY OMITTED]		
09/24/2012	168	ORDER: Pursuant to 28 U.S.C. § 636, it is ordered that all cases within the In re Stanford Entities Securities Litigation multidistrict litigation, other than Securities Exchange Commission v. Stanford, et al., Civil Action No. 3:09-0298-N, are hereby referred to the Hon. E. Scott Frost, United States Magistrate Judge, for hearing and determination. See Order for specifics. (Ordered by Judge David C Godbey on 9/24/2012) (gmg) (Entered: 09/26/2012)
[DOCKET ENTRIES OMITTED]		
02/11/2013	170	Received letter from USCA5 Re: Supreme Court Granted certiorari (svc) (Entered: 02/12/2013)

APPENDIX C

Relevant Docket Entries

Roland v. Green,

Case No. 3:10-cv-00224 (N.D. Tex.)

DATE FILED	ECF NO.	DOCKET TEXT
08/21/2009	1	NOTICE OF REMOVAL from 19th Judicial District Court of east Baton Rouge Parish, Case Number 581479. (Filing fee $ 350 receipt number 053N00000000000481165), filed by Grady Layfield, Hank Mills, John Schwab. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Schwab, Donna) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 08/21/2009)
08/24/2009	2	Letter to MDL Panel notifying panel of possible MDL case (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 08/24/2009)
09/17/2009	3	Ex Parte MOTION to Transfer Case to Pursuant to Local Rule 3.1 by all plaintiffs. (Attachments: # 1 Proposed Pleading; Order, # 2 Memorandum in Support Memorandum in Support of Ex Parte Motion to Transfer Case

DATE FILED	ECF NO.	DOCKET TEXT
		Pursuant to Local Rule 3.1, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 09/17/2009)
09/18/2009	4	MOTION to Remand by all plaintiffs. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Proposed Pleading; Order, # 6 Memorandum in Support Memorandum in Support of Motion to Remand, # 7 Exhibit Exhibit A to Memo, # 8 Exhibit Exhibit B to Memo, # 9 Exhibit Exhibit C to Memo, # 10 Exhibit Exhibit D to Memo)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 09/18/2009)
10/08/2009	5	Consent to Removal and Notice Setting Forth Independent Basis for Removal by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 E)(Holmes, Duris) Modified on 10/8/2009 to

DATE FILED	ECF NO.	DOCKET TEXT
		correct title of document (JDL,). [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
[DOCKET ENTRY OMITTED]		
10/08/2009	7	MOTION to Consolidate Case with 3:09 CV 678 JVP-DLD by SEI Investments Company. (Attachments: # 1 Memorandum in Support)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
[DOCKET ENTRY OMITTED]		
10/08/2009	9	MEMORANDUM in Opposition to 4 MOTION to Remand filed by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
10/14/2009	10	Letter dated 10-14-09 from Duris L. Holmes to Judges Parker and Brady. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/14/2009)

DATE FILED	ECF NO.	DOCKET TEXT
10/16/2009	11	ORDER: CA #09-676-A is transferred from Magistrate Judge Stephen C. Riedlinger to Magistrate Judge Docia L Dalby and the 4 MOTION to Remand is REFERRED to Magistrate Judge Dalby for report and recommendation. Signed by Judge James J. Brady on 10/15/2009. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/16/2009)
10/22/2009	12	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Jack Bruno waiver sent on 9/16/2009, answer due 11/16/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)

DATE FILED	ECF NO.	DOCKET TEXT
10/22/2009	13	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Jay Comeaux waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	14	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. James

DATE FILED	ECF NO.	DOCKET TEXT
		Fontenot waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	15	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Dirk Harris waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	16	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone,

DATE FILED	ECF NO.	DOCKET TEXT
		Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Charles Jantzi waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	17	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Joe Klingen waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	18	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven,

DATE FILED	ECF NO.	DOCKET TEXT
		Thomas J Moran, Ralph D D'Amore, James Roland, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Grady Layfield waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	19	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Deborah S Forbes. Hank Mills waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.]

DATE FILED	ECF NO.	DOCKET TEXT
		(Entered: 10/22/2009)
10/22/2009	20	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Thomas Newland waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	21	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret.

DATE FILED	ECF NO.	DOCKET TEXT
		Trust, G. Kendall Forbes, Deborah S Forbes. Russ Newton waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	22	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Deborah S Forbes. Zack Parrish waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	23	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R

DATE FILED	ECF NO.	DOCKET TEXT
		Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. J. D. Perry waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	24	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Jim Weller waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/23/2009	25	ANSWER to Petition (Notice of

DATE FILED	ECF NO.	DOCKET TEXT
		Removal) by Russ Newton. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/23/2009)
10/26/2009	26	WAIVER OF SERVICE Returned Executed by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston, Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. Rhonda Lear waiver sent on 9/29/2009, answer due 11/30/2009. (Burkhalter, Crystal) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/26/2009)
10/26/2009	27	Corporate Disclosure Statement by SEI Investments Company. (Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/26/2009)
10/27/2009	28	MOTION to Remand in Response to Notice of Removal

DATE FILED	ECF NO.	DOCKET TEXT
		by SEI and Motion for Sanctions by all plaintiffs. (Attachments: # 1 Proposed Pleading; Order, # 2 Memorandum in Support Motion to Remand in Response to Notice of Removal by SEI, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/27/2009)
10/27/2009		MOTION for Sanctions by all plaintiffs. (This is for statistical purposes only, see doc #28 for image.) (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/27/2009)
11/03/2009	29	Ex Parte MOTION for Extension of Time to File Answer by Jim Weller. (Attachments: # 1 Attachment Order)(Marionneaux, Kyle) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/03/2009)
11/03/2009		MOTION(S) REFERRED: 29 Ex Parte MOTION for Extension of Time to File Answer. This motion is now pending before the USMJ.

DATE FILED	ECF NO.	DOCKET TEXT
		(JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/03/2009)
11/04/2009	30	ORDER granting 29 Motion for Extension of Time to Answer 1 Petition for Deft Jim Weller. Responsive pleadings/answer extended until the later date of 15 days after the Court rules on the remand motion or 11/23/2009, which is 20 days from the present deadline for filing responsive pleadings. Signed by Magistrate Judge Docia L Dalby on 11/4/2009. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/04/2009)
11/04/2009	31	NOTICE by Jay Comeaux of Receivership Stay (Attachments: # 1 Attachment Amended Order Appointing Receiver)(Sexton, Raymond) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/04/2009)
11/05/2009	32	Joint MOTION for Extension of Time to File Answer by William Bruce Johnson, Terence Beven, Thomas J Moran, Ralph D D'Amore, James Roland, Daniel P Landry, Ronald R Marston,

DATE FILED	ECF NO.	DOCKET TEXT
		Rodney P Starkey, Stephen R Wilson, Michael J Giambrone, Jeanne Anne Mayhall, John Wade, Lynn J Philippe, Thomas E Bowden, At Lloyd's of London In Syndicates 2987, 1866, 1084, 1274, 4000 & 1183, T. E. Bowden Sr. Ret. Trust, G. Kendall Forbes, Susan Roland, Deborah S Forbes. (Attachments: # 1 Proposed Order)(Duplantis, Heather) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/05/2009)
11/05/2009		MOTION(S) REFERRED: 32 Joint MOTION for Extension of Time to File Answer. This motion is now pending before the USMJ. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/06/2009)
11/09/2009	33	ORDER granting 32 Motion for Extension of Time to File Responsive Pleadings for deft Certain Underwriters at Lloyd's of London, as stated herein. Signed by Magistrate Judge Docia L Dalby on 11/9/2009. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/09/2009)

DATE FILED	ECF NO.	DOCKET TEXT
11/16/2009	34	MEMORANDUM in Opposition to MOTION for Sanctions, 28 MOTION to Remand in Response to Notice of Removal by SEI and Motion for Sanctions filed by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/16/2009)
11/24/2009	35	ORDER REFERRING MOTION to USMJ: 28 MOTION to Remand in Response to Notice of Removal by SEI and Motion for Sanctions. Signed by Chief Judge Ralph E. Tyson on 11/24/2009. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/24/2009)
02/03/2010	36	Letter from the MDL Panel (Not Certified) dated 3/3/2010 from Clerk, MDL Panel to Clerk of Court. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 02/03/2010)
02/04/2010	37	Order Transferring Case to MDL Court. Electronic letter

DATE FILED	ECF NO.	DOCKET TEXT
		sent....Northern District of Texas (LSM,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 02/04/2010)
02/05/2010	38	Case electronically transferred in from District of Louisiana Middle; Case Number 3:09-cv-00676. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas should seek admission promptly. Forms and Instructions found at www.txnd.uscourts.gov. Copy of NEF to be sent US Mail to parties not electronically noticed. (Entered: 02/05/2010)
[DOCKET ENTRIES OMITTED]		
08/20/2010	50	ORDER: Status Conference set for 9/23/2010 09:00 AM in US Courthouse, Courtroom 1505, 1100 Commerce St., Dallas, TX, 75242-1310 before Judge David C Godbey. (Counsel is advised multiple NEFs may be received for this filing.) (Ordered by Judge David C Godbey on 8/20/2010) (jkm) (Entered: 08/20/2010)
09/23/2010		ELECTRONIC Minute Entry for proceedings held before

DATE FILED	ECF NO.	DOCKET TEXT
		Judge David C Godbey: Status Conference held on 9/23/2010. Attorney Appearances: Receiver - Kevin Sadler; Examiner - John Little; Plaintiff - David Reece, Phil Preis Ed Snyder, Ed Valdespino, Peter Morgenstern, Randall Pulman, Michael Stanley, McNeel Lane, James George, Joe Brophy; Defense - Stephen Malouf, Matt Acosta, Jonathan Polkes, Yvette Ostolaza, Jeff Chapman, Richard Archibald and Robert Plotkin. The examiner should submit a status report concerning the afternoon meeting of 9/23/2010. (Court Reporter: Linda Robbins) (No exhibits) Time in Court - 01:45. (jkm) (Entered: 09/27/2010) (jkm) (Entered: 09/30/2010)
09/30/2010	51	STATUS REPORT Examiner's Report No. 3 filed by John J Little. (jkm) (Entered: 10/13/2010)
02/17/2011	52	ORDER: Status Conference set for 3/28/2011 03:00 PM in US Courthouse, Courtroom 1351, 1100 Commerce St., Dallas, TX 75242-1310 before Judge David

DATE FILED	ECF NO.	DOCKET TEXT
		C Godbey. (Ordered by Judge David C Godbey on 2/17/2011) (jkm) (Entered: 02/18/2011)
05/10/2011	53	ORDER: Any party that has briefed SLUSA issues in a case proceeding under this MDL may call the Court's attention to that briefing by filing an appropriate notice in Roland within thirty (30) days of the date of this Order. It is unnecessary for the parties in Civil Action No. 3:09-CV-1600-N to provide such notice. Any other party desiring to apprise the Court of its views should file, within thirty (30) days of the date of this Order, a motion for leave to file an amicus brief, together with a copy of such proposed brief not to exceed twenty-five (25) pages. Motions for leave should indicate how the partys legal position differs from those of the parties in Roland and Troice v. Proskauer. (Ordered by Judge David C Godbey on 5/10/2011) (jkm) (Entered: 05/11/2011)
05/12/2011	54	ORDER CONSOLIDATING CASES: Member case(s) 3:10cv0225 consolidated with

DATE FILED	ECF NO.	DOCKET TEXT
		lead case 3:10cv0224. (Ordered by Judge David C Godbey on 5/12/2011) (twd) (Entered: 05/16/2011)
05/31/2011	55	NOTICE of Filing in Other Action filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom (Attachments: # 1 Exhibit(s) 1) (Burger, Neil) (Entered: 05/31/2011)
06/01/2011	56	Supplemental Document by Willis of Colorado, Inc. Letter to Court re SLUSA briefing. (Hartmann, Michelle) (Entered: 06/01/2011)
06/07/2011	57	NOTICE of Filing in Other Action filed by Adams and Reese LLP (Attachments: # 1 Exhibit(s) 1). Party Adams & Reece LLP added. (Keltner, David) (Entered: 06/07/2011)
06/09/2011	58	Supplemental NOTICE and Memorandum on SLUSA Issues by Roland Plaintiffs filed by Mamie Baumann, Terence Beven, Wanda Bevis, Thomas E Bowden, Linda Boyd, James Brown, Murphy Buell, Jerry Burris, John Buscheme,

DATE FILED	ECF NO.	DOCKET TEXT
		Virginia Buscheme, Robert Bush, Anita Ellen Carter, Ira Causey, Clyde J Chisholm, Joseph Chustz, Darrell Courville, Ralph D D'Amore, William Dawson, Fred Demarest, Kenneth Dougherty, Marcel Dumestre, Margaret Dumestre, Gwen Fabre, Leah Farr, Joan Feucht, Richard Feucht, Deborah S Forbes, G. Kendall Forbes, Michael J Giambrone, Robert Gildersleeve, Willa Mae Gildersleeve, Gordon C Gill, Nancy Gill, Charles Hart, William Bruce Johnson, Dennis Kirby, Kerry Kling, Daniel P Landry, Merrill Laplante, Laura Lee, Troy Lillie, Gary Magee, Claude Marquette, Ronald R Marston, Charles Massey, Jeanne Anne Mayhall, Billie Ruth McMorris, Ronald McMorris, Virginia McMorris, Lynn Gildersleeve Michelli, Kathleen Mier, Louis Mier, Jacqueline Milet, Thomas J Moran, Bobby Nix, Margaret S Nix, Bennie O'Rear, Claudia O'Rear, Arthur Ordoyne, Lonnie Ordoyne, Larry Perkins, Monty Perkins, Lynn

DATE FILED	ECF NO.	DOCKET TEXT
		J Philippe, William Phillips, Charles Rawl, James Roland, Susan Roland, Charles Sanchez, Mamie Sanchez, Julie Savoy, Robert Schwendimann, Thomas Slaughter, Larry Smith, Robert Smith, Rodney P Starkey, Carol Stegall, James Robert Stegall, Walter Stone, T. E. Bowden Sr. Ret. Trust, Terry Tarver, Terry Tullis, Ronald Valentine, Anthony Ventrella, John Wade, Olivia Sue Warnock, Arthur Waxley, Charles White, Kenneth Wilkewitz, Stephen R Wilson, Martha Jean Witmer, Sharon Witmer. (Preis, Phillip) Modified on 6/9/2011 (dnc). (Entered: 06/09/2011)
06/09/2011	59	MOTION for Leave to File Brief as Amicus Curiae filed by Official Stanford Investors Committee with Brief/Memorandum in Support. (Attachments: # 1 Exhibit(s) "A", # 2 Proposed Order) (Snyder, Edward) (Entered: 06/09/2011)
06/09/2011	60	MOTION for Leave to File Brief as Amicus Curiae addressing Securities

DATE FILED	ECF NO.	DOCKET TEXT
		Litigation Uniform Standards Act filed by John J Little (Attachments: # 1 Exhibit(s) Proposed Brief, # 2 Proposed Order) (Little, John) (Entered: 06/09/2011)
06/09/2011	61	NOTICE Letter to Judge Godbey regarding SLUSA issues in the Standord MDL proceeding filed by Bowen, Miclette & Britt, Inc. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B, # 3 Exhibit(s) C) (Foster, Bradley) (Entered: 06/09/2011)
06/09/2011	62	Brief/Memorandum in Support filed by Edward Valdespino re 53 Order,,, (Valdespino, Edward) (Entered: 06/09/2011)
06/09/2011	63	MOTION for Leave to File Amicus Brief Regarding Applicability of SLUSA to Claims Concerning the Purchase or Sale of Stanford CDs filed by Ralph S. Janvey with Brief/Memorandum in Support. (Attachments: # 1 Proposed Order, # 2 Amicus Brief) (Sadler, Kevin) (Entered: 06/09/2011)

DATE FILED	ECF NO.	DOCKET TEXT
07/20/2011		ELECTRONIC ORDER granting 59 Motion for Leave to File. The party shall seven days to file amicus briefs pursuant to the Court's advisory notice. (Ordered by Judge David C Godbey on 7/20/2011) (Judge David C Godbey) (Entered: 07/20/2011)
07/20/2011		ELECTRONIC ORDER granting 60 Motion for Leave to File. The party shall have 7 days from the date of this order file amicus briefs pursuant to the Court's advisory notice. (Ordered by Judge David C Godbey on 7/20/2011) (Judge David C Godbey) (Entered: 07/20/2011)
07/20/2011		ELECTRONIC ORDER granting 63 Motion for Leave to File. The party shall have seven days from the date of this order to file amicus brief pursuant to the Court's advisory notice. (Ordered by Judge David C Godbey on 7/20/2011) (Judge David C Godbey) (Entered: 07/20/2011)
07/22/2011	64	Amicus Brief filed by Ralph S. Janvey Regarding Applicability of SLUSA to Claims

DATE FILED	ECF NO.	DOCKET TEXT
		Concerning the Purchase or Sale of Stanford CD's (Sadler, Kevin) Modified on 7/25/2011 (skt). (Entered: 07/22/2011)
07/22/2011	65	NOTICE: The Court takes judicial notice of the Declaration of Linda M. Yoder filed in SEC v. Stanford Intl Bank, Ltd, Civil Action No. 3:09-CV-298-N (Ordered by Judge David C Godbey on 7/22/2011) (mfw) (Entered: 07/22/2011)
07/25/2011	66	Amicus Curi e Brief Addressing the Securities Litigation Uniform Standards Act filed by Official Stanford Investors Committee (Snyder, Edward) Modified on 7/27/2011 (skt). (Entered: 07/25/2011)
07/25/2011	67	Examiner's Brief, as Amicus Curiae, Addressing the Securities Litigation Uniform Standards Act filed by John J Little (Attachments: # 1 Exhibit(s) 1) (Dredla, Megan) Modified on 7/27/2011 (skt). (Entered: 07/25/2011)
07/26/2011	68	MOTION for Leave to File Brief in Response to Amicus and Supplemental Submissions

DATE FILED	ECF NO.	DOCKET TEXT
		re SLUSA filed by SEI Investments Company (Attachments: # 1 Exhibit A, # 2 Proposed Order) (Morgan, Rachel) (Entered: 07/26/2011)
07/27/2011	69	ELECTRONIC ORDER granting 68 Motion for Leave to File. (Ordered by Judge David C Godbey on 7/27/2011) (Judge David C Godbey) (Entered: 07/27/2011)
07/28/2011	70	Brief in Response to Amicus and Supplemental Submission Addressing SLUSA filed by SEI Investments Company re 67 Examiner's Brief, as Amicus Curiae, Addressing the Securities Litigation Uniform Standards Act, 64 Amicus Brief, 66 Amicus Curiae Brief Addressing the Securities Litigation Uniform Standards Act. (Morgan, Rachel) (Entered: 07/28/2011)
07/28/2011	71	MOTION for Leave to File Response to Amici Curiae filed by P Mauricio Alvarado, Chadbourne & Parke LLP, Proskauer Rose LLP, Thomas V Sjoblom (Attachments: # 1 Exhibit(s) Proposed Response Brief, # 2 Proposed Order)

DATE FILED	ECF NO.	DOCKET TEXT
		(Burger, Neil) (Entered: 07/28/2011)
08/31/2011	72	ORDER: The Court dismisses this action with prejudice. (Ordered by Judge David C Godbey on 8/31/2011) (skt) (Entered: 09/01/2011)
08/31/2011	73	FINAL JUDGMENT: It is ordered that the Plaintiffs take nothing by their claims against the Defendants and that those claims are dismissed with prejudice. Court costs are taxed against the Plaintiffs. (Ordered by Judge David C Godbey on 8/31/2011) (skt) (Entered: 09/01/2011)
09/23/2011	74	NOTICE OF APPEAL to the Fifth Circuit as to 73 Judgment, 72 Order by Mamie Baumann, Terence Beven, Wanda Bevis, Thomas E Bowden, Linda Boyd, James Brown, Murphy Buell, Jerry Burris, John Buscheme, Virginia Buscheme, Robert Bush, Anita Ellen Carter, Ira Causey, Clyde J Chisholm, Joseph Chustz, Darrell Courville, Ralph D D'Amore, William Dawson, Fred Demarest, Kenneth Dougherty,

DATE FILED	ECF NO.	DOCKET TEXT
		Marcel Dumestre, Margaret Dumestre, Gwen Fabre, Leah Farr, Joan Feucht, Richard Feucht, Deborah S Forbes, G. Kendall Forbes, Michael J Giambrone, Robert Gildersleeve, Willa Mae Gildersleeve, Gordon C Gill, Nancy Gill, Charles Hart, William Bruce Johnson, Dennis Kirby, Kerry Kling, Daniel P Landry, Merrill Laplante, Laura Lee, Troy Lillie, Gary Magee, Claude Marquette, Ronald R Marston, Charles Massey, Jeanne Anne Mayhall, Billie Ruth McMorris, Ronald McMorris, Virginia McMorris, Lynn Gildersleeve Michelli, Kathleen Mier, Louis Mier, Jacqueline Milet, Thomas J Moran, Bobby Nix, Margaret S Nix, Bennie O'Rear, Claudia O'Rear, Arthur Ordoyne, Lonnie Ordoyne, Larry Perkins, Monty Perkins, Lynn J Philippe, William Phillips, James Roland, Susan Roland, Charles Sanchez, Mamie Sanchez, Julie Savoy, Robert Schwendimann, Thomas Slaughter, Larry Smith, Robert Smith, Rodney P Starkey,

DATE FILED	ECF NO.	DOCKET TEXT
		Carol Stegall, James Robert Stegall, Walter Stone, T. E. Bowden Sr. Ret. Trust, Terry Tarver, Terry Tullis, Ronald Valentine, Anthony Ventrella, John Wade, Olivia Sue Warnock, Arthur Waxley, Charles White, Kenneth Wilkewitz, Stephen R Wilson, Martha Jean Witmer, Sharon Witmer. Filing fee $455, receipt number 0539-4137359. T.O. form to appellant electronically at Transcript Order Form or US Mail as appropriate. Copy of NOA to be sent US Mail to parties not electronically noticed. (Attachments: # 1 Exhibit(s) A, # 2 Exhibit(s) B) (Preis, Phillip) (Entered: 09/23/2011)
09/28/2011	75	Transcript Order Form: re 74 Notice of Appeal transcript not requested (Preis, Phillip) Modified docket text on 9/29/2011 (jkm). (Entered: 09/28/2011)
10/13/2011		USCA Case Number 11-10932 for 74 Notice of Appeal filed by Virginia McMorris, et al. (svc) (Entered: 10/13/2011)
10/13/2011		Record on Appeal for USCA5

DATE FILED	ECF NO.	DOCKET TEXT
		11-10932 (related to 74 appeal): Record consisting of: 10 ECF electronic record (6 from 10cv224 and 4 from 10cv225), certified to USCA. To request a copy of the record (on disk or on paper), contact the appeals deputy in advance to arrange delivery. (svc) (Entered: 10/13/2011)
10/14/2011		Record on Appeal for USCA5 11-10932 (related to 74 appeal): transmitted to Preis Gordon APLC on disk only by mail. Shipped: Federal Express (svc) (Entered: 10/14/2011)
11/07/2011	76	Received letter from USCA5: The court has granted the appellants motion to supplement the record in this case (svc) (Entered: 11/07/2011)
11/07/2011	77	21-20 Declaration of Karyl Van Tassell from case 3:09cv721 filed per USCA5 ORDER granting motion to supplement the record on appeal. (svc) (Entered: 11/07/2011)
11/08/2011		Supplemental Record on Appeal for USCA5 11-10932 (related to 74 appeal): Record consisting of: 1 ECF electronic

DATE FILED	ECF NO.	DOCKET TEXT
		record, certified to USCA. To request a copy of the record (on disk or on paper), contact the appeals deputy in advance to arrange delivery. (svc) (Entered: 11/08/2011)
11/08/2011		Supplemental Record on Appeal for USCA5 11-10932 (related to 74 appeal): transmitted to Preis Gordon APLC on disk only by mail. Shipped: Federal Express 797712865817 (svc) (Entered: 11/08/2011)
11/14/2011		Record on Appeal for USCA5 11-10932 (related to 74 appeal): transmitted to Morgan, Lewis & Bockius LLP on disk only by hand delivery. Shipped: Federal Express 797734577747 (svc) (Entered: 11/14/2011)
11/18/2011	78	Received letter from USCA5 re: Consolidation of appeals. (svc) (Entered: 11/22/2011)
01/04/2012	79	Received letter from USCA5 regarding removal of Mark Manela as an appellee. (svc) (Entered: 01/05/2012)
01/18/2012	80	Record on Appeal for USCA5 11-10932 (related to 74 appeal): Record consisting of: 11

DATE FILED	ECF NO.	DOCKET TEXT
		Volume(s) ECF electronic record((7 from 10cv224 and 4 from 10cv225), transmitted to USCA5. Shipped: Federal Express 296232215006231, 296232215006224 (svc) Modified on 1/18/2012 (svc). (Entered: 01/18/2012)
01/24/2012	81	Received letter from USCA5 re: revised caption (svc) (Entered: 01/26/2012)
05/08/2012	82	Opinion of USCA (certified copy) in accordance with USCA judgment re 74 Notice of Appeal filed by Virginia McMorris,et al. The judgments are REVERSED. The Troice cases (3:10cv224) are remanded to the district court, and the Roland case is remanded to the State Court. (svc) (Entered: 05/08/2012)
05/08/2012	83	JUDGMENT/MANDATE of USCA as to 74 Notice of Appeal filed by Virginia McMorris,et al. Case remanded to the district court for further proceedings. Issued as Mandate: 4/27/12. The electronic copy of the record has been recycled (svc) (Entered: 05/09/2012)

DATE FILED	ECF NO.	DOCKET TEXT
05/09/2012		Notice that certified copies of 83 USCA Judgment/Mandate, 82 Opinion of USCA and docket sheet have been mailed to East Baton Rouge Parish, Clerk of Court per remand to state court from USCA5. (svc) (Entered: 05/09/2012)
05/09/2012		Document E-Mailed: [82,83] E-mailed to MDL Panel on 5/9/2012. (svc) (Entered: 05/09/2012)
05/09/2012	85	Appeal Record Not Returned. Electronic copy of the record has been recycled (svc) (Entered: 05/11/2012)
05/09/2012	86	USCA5 Bill of Costs (svc) (Entered: 05/11/2012)
05/09/2012	87	JUDGMENT/MANDATE of USCA (certified copy) as to 74 Notice of Appeal, filed by Virginia McMorris et al. Issued as Mandate: 4/27/12. (svc) (Entered: 05/11/2012)
05/11/2012	84	NOTICE of Filing of Bar Date Notice and Proof of Claim Form filed by Ralph S. Janvey (Sadler, Kevin) (Entered: 05/11/2012)

APPENDIX D

Relevant Docket Entries

Farr v. Green,

Case No. 3:10-cv-00225 (N.D. Tex.)

DATE FILED	ECF NO.	DOCKET TEXT
08/21/2009	1	NOTICE OF REMOVAL from 19th Judicial District Court of East Baton Rouge Parish, Case Number 581480. (Filing fee $ 350 receipt number 053N0000000000481190), filed by Grady Layfield, Hank Mills, John Schwab. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(Schwab, Donna) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 08/21/2009)
08/24/2009	2	Letter to MDL Panel notifying panel of possible MDL case (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 08/24/2009)
09/17/2009	3	Ex Parte MOTION to Transfer Case to Pursuant to Local Rule 3.1 by all plaintiffs. (Attachments: # 1 Proposed Pleading; Order, # 2 Memorandum in Support Memorandum in Support of Ex Parte Motin to Transfer Case

DATE FILED	ECF NO.	DOCKET TEXT
		Pursuant to Local Rule 3.1, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F, # 9 Exhibit G)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 09/17/2009)
09/18/2009	4	MOTION to Remand by all plaintiffs. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Proposed Pleading; Order, # 6 Memorandum in Support Memorandum in Support of Motion to Remand, # 7 Exhibit Exhibit A to Memo, # 8 Exhibit Exhibit B to Memo, # 9 Exhibit Exhibit C to Memo, # 10 Exhibit Exhibit D to Memo)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] Modified per dist chambers on 2/25/2010 (axm). (Entered: 09/18/2009)
10/08/2009	5	Consent to Removal and Notice Setting Forth Independent Basis for Removal by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Holmes, Duris)

DATE FILED	ECF NO.	DOCKET TEXT
		Modified on 10/8/2009 to edit title of document (BP,). [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
[DOCKET ENTRY OMITTED]		
10/08/2009	7	MOTION to Consolidate Case with 3:09-cv-00676 by SEI Investments Company. (Attachments: # 1 Memorandum in Support)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
10/08/2009	8	MEMORANDUM in Opposition to 4 MOTION to Remand filed by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/08/2009)
[DOCKET ENTRY OMITTED]		
10/14/2009	10	Letter dated 10-14-09 from Duris L. Holmes to Judges Parker and Brady. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered:

DATE FILED	ECF NO.	DOCKET TEXT
		10/14/2009)
10/16/2009	11	ORDER REFERRING MOTION to USMJ: 4 MOTION to Remand filed by Virginia McMorris, Mamie Baumann, Jerry Burris, Margaret Dumestre, Clyde J Chisholm, Gordon C Gill, Arthur Ordoyne, Willa Mae Gildersleeve, Joseph Chustz, Kenneth Dougherty, Terry Tarver, Sharon Witmer, Ira Causey, Marcel Dumestre, Kenneth Wilkewitz, Robert Schwendimann, Bennie O'Rear, James Robert Stegall, Leah Farr, Walter Stone, Julie Savoy, Robert Smith, Charles Massey, Dennis Kirby, Larry Smith, Merrill Laplante, Claudia O'Rear, Gary Magee, Wanda Bevis, Lonnie Ordoyne, Linda Boyd, Larry Perkins, Mamie Sanchez, Gwen Fabre, Fred Demarest, Claude Marquette, Richard Feucht, Margaret S Nix, Kathleen Mier, Virginia Buscheme, Ronald Valentine, William Phillips, Bobby Nix, Martha Jean Witmer, Monty Perkins, Louis Mier, William Dawson, Joan Feucht, Charles Hart, Charles White, Billie Ruth

DATE FILED	ECF NO.	DOCKET TEXT
		McMorris, John Buscheme, James Brown, Darrell Courville, Anita Ellen Carter, Carol Stegall, Anthony Ventrella, Ronald McMorris, Olivia Sue Warnock, Troy Lillie, Jacqueline Milet, Laura Lee, Murphy Buell, Thomas Slaughter, Arthur Waxley, Robert Bush, Terry Tullis, Charles Sanchez, Lynn Gildersleeve Michelli, Kerry Kling, Robert Gildersleeve, Nancy Gill. Signed by Judge James J. Brady on 10/14/09. (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/16/2009)
10/22/2009	12	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie

DATE FILED	ECF NO.	DOCKET TEXT
		Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Jack Bruno waiver sent on 9/16/2009, answer due 11/16/2009. (Preis,

DATE FILED	ECF NO.	DOCKET TEXT
		Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	13	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen

DATE FILED	ECF NO.	DOCKET TEXT
		Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Arlen Tiger Blackwell, Clyde J Chisholm, Ronald McMorris. Ron Clayton waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	14	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James

DATE FILED	ECF NO.	DOCKET TEXT
		Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm,

DATE FILED	ECF NO.	DOCKET TEXT
		Ronald McMorris. Jay Comeaux waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	15	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy

DATE FILED	ECF NO.	DOCKET TEXT
		Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. James Fontenot waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	16	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht,

DATE FILED	ECF NO.	DOCKET TEXT
		Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer,

DATE FILED	ECF NO.	DOCKET TEXT
		Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Gary Haindel waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	17	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee,

DATE FILED	ECF NO.	DOCKET TEXT
		Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Dirk Harris waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	18	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas

DATE FILED	ECF NO.	DOCKET TEXT
		Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie

DATE FILED	ECF NO.	DOCKET TEXT
		Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Charles Jantzi waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	19	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth

DATE FILED	ECF NO.	DOCKET TEXT
		Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Joe Klingen waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	20	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson,

DATE FILED	ECF NO.	DOCKET TEXT
		Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris,

DATE FILED	ECF NO.	DOCKET TEXT
		Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Grady Layfield waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	21	WAIVER OF SERVICE Returned Executed by John Does 1-10, Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby

DATE FILED	ECF NO.	DOCKET TEXT
		Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Hank Mills waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)

DATE FILED	ECF NO.	DOCKET TEXT
10/22/2009	22	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia

DATE FILED	ECF NO.	DOCKET TEXT
		Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Zack Parrish waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	23	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie

DATE FILED	ECF NO.	DOCKET TEXT
		Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Timothy E. Parsons waiver sent on 9/4/2009, answer due 11/3/2009.

DATE FILED	ECF NO.	DOCKET TEXT
		(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	24	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae

DATE FILED	ECF NO.	DOCKET TEXT
		Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. J. D. Perry waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	25	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James

DATE FILED	ECF NO.	DOCKET TEXT
		Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm,

DATE FILED	ECF NO.	DOCKET TEXT
		Ronald McMorris. John Schwab waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	26	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy

DATE FILED	ECF NO.	DOCKET TEXT
		Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Alvaro Trullenque waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	27	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht,

DATE FILED	ECF NO.	DOCKET TEXT
		Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer,

DATE FILED	ECF NO.	DOCKET TEXT
		Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Jim Weller waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/22/2009	28	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee,

DATE FILED	ECF NO.	DOCKET TEXT
		Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Michael Word waiver sent on 9/4/2009, answer due 11/3/2009. (Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/22/2009)
10/26/2009	29	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas

DATE FILED	ECF NO.	DOCKET TEXT
		Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie

DATE FILED	ECF NO.	DOCKET TEXT
		Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Rhonda Lear waiver sent on 9/29/2009, answer due 11/30/2009. (Burkhalter, Crystal) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/26/2009)
10/26/2009	30	WAIVER OF SERVICE Returned Executed by Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis,

DATE FILED	ECF NO.	DOCKET TEXT
		Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine, Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. Russ Newton waiver sent on 10/6/2009, answer due 12/7/2009. (Burkhalter, Crystal) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/26/2009)
10/26/2009	31	Corporate Disclosure

DATE FILED	ECF NO.	DOCKET TEXT
		Statement by SEI Investments Company. (Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 10/26/2009)
10/27/2009	32	MOTION to Remand in Response to Notice of Removal by SEI and Motion for Sanctions by all plaintiffs. (Attachments: # 1 Proposed Pleading; Order, # 2 Memorandum in Support Memorandum in Support of Motion to Remand, # 3 Exhibit A, # 4 Exhibit B, # 5 Exhibit C, # 6 Exhibit D, # 7 Exhibit E, # 8 Exhibit F)(Preis, Phillip) [Transferred from Louisiana Middle on 2/5/2010.] Modified per dist chambers on 2/25/2010 (axm). (Entered: 10/27/2009)
10/27/2009	32	MOTION for Sanctions by all plaintiffs. (This entry is for statistical purposes only. This is the second relief of a multi relief motion. See record document 32 for image.) (BP,) Modified on 11/24/2009 to add doc number (BP,).[Transferred from Louisiana Middle on 2/5/2010.] Modified per dist chambers on 2/25/2010 (axm).

DATE FILED	ECF NO.	DOCKET TEXT
		(Entered: 10/27/2009)
11/02/2009	33	ANSWER to Complaint by Russ Newton.(BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/02/2009)
11/03/2009	34	Ex Parte MOTION for Extension of Time to File Answer by Jim Weller. (Attachments: # 1 Attachment Order)(Marionneaux, Kyle) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/03/2009)
11/03/2009		MOTION(S) REFERRED: 34 Ex Parte MOTION for Extension of Time to File Answer. This motion is now pending before the USMJ. (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/03/2009)
11/04/2009	35	ORDER granting 34 Motion for Extension of Time to Answer as stated herein. Signed by Magistrate Judge Docia L Dalby on 11/4/09. (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/04/2009)
11/04/2009	36	NOTICE by Jay Comeaux of

DATE FILED	ECF NO.	DOCKET TEXT
		Receivership Stay (Attachments: # 1 Attachment Amended Order Appointing Receiver)(Sexton, Raymond) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/04/2009)
11/05/2009	37	Joint MOTION for Extension of Time to File Answer by Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183, Arthur Ordoyne, William Dawson, Terry Tullis, James Robert Stegall, Anthony Ventrella, Robert Smith, Thomas Slaughter, Larry Perkins, William Phillips, Charles Hart, Leah Farr, Richard Feucht, Lonnie Ordoyne, Arthur Waxley, Darrell Courville, Merrill Laplante, James Brown, Ira Causey, Jerry Burris, Jacqueline Milet, Louis Mier, Troy Lillie, Mamie Baumann, Charles Sanchez, Joseph Chustz, Robert Bush, Bobby Nix, Claude Marquette, Gwen Fabre, Robert Schwendimann, Wanda Bevis, Terry Tarver, Kenneth Dougherty, Marcel Dumestre, Ronald Valentine,

DATE FILED	ECF NO.	DOCKET TEXT
		Bennie O'Rear, Julie Savoy, Laura Lee, Dennis Kirby, Billie Ruth McMorris, Larry Smith, Kenneth Wilkewitz, Murphy Buell, Charles White, Kerry Kling, Lynn Gildersleeve Michelli, Willa Mae Gildersleeve, Anita Ellen Carter, Fred Demarest, Nancy Gill, Linda Boyd, Virginia Buscheme, Robert Gildersleeve, Walter Stone, Martha Jean Witmer, Virginia McMorris, Carol Stegall, Gary Magee, Monty Perkins, Joan Feucht, Kathleen Mier, Mamie Sanchez, Margaret S Nix, Margaret Dumestre, Claudia O'Rear, Sharon Witmer, Gordon C Gill, John Buscheme, Charles Massey, Olivia Sue Warnock, Clyde J Chisholm, Ronald McMorris. (Attachments: # 1 Proposed Order)(Duplantis, Heather) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/05/2009)
11/05/2009		MOTION(S) REFERRED: 37 Joint MOTION for Extension of Time to File Answer. This motion is now pending before the USMJ. (BP,) [Transferred

DATE FILED	ECF NO.	DOCKET TEXT
		from Louisiana Middle on 2/5/2010.] (Entered: 11/06/2009)
11/09/2009	38	ORDER granting 37 Motion for Extension of Time to Answer as stated herein. Signed by Magistrate Judge Docia L Dalby on 11/9/09. (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/09/2009)
11/16/2009	39	MEMORANDUM in Opposition to MOTION for Sanctions, 32 MOTION to Remand in Response to Notice of Removal by SEI and Motion for Sanctions filed by SEI Investments Company. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Holmes, Duris) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/16/2009)
11/24/2009	40	ORDER REFERRING MOTION to USMJ: 32 MOTION to Remand in Response to Notice of Removal by SEI and Motion for Sanctions. Signed by Chief Judge Ralph E. Tyson on 11/24/09. (BP,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 11/24/2009)

DATE FILED	ECF NO.	DOCKET TEXT
02/03/2010	41	Letter from the MDL Panel (Not Certified) dated 3/3/2010 from Clerk, MDL Panel to Clerk of Court. (JDL,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 02/03/2010)
02/04/2010	42	Order Transferring Case to MDL Court. Electronic letter sent....Northern District of Texas (LSM,) [Transferred from Louisiana Middle on 2/5/2010.] (Entered: 02/04/2010)
02/05/2010	43	Case electronically transferred in from District of Louisiana Middle; Case Number 3:09-cv-00678. Unless exempted, attorneys who are not admitted to practice in the Northern District of Texas should seek admission promptly. Forms and Instructions found at www.txnd.uscourts.gov. Copy of NEF to be sent US Mail to parties not electronically noticed. (Entered: 02/05/2010)
[DOCKET ENTRIES OMITTED]		
08/20/2010	55	ORDER: Status Conference set for 9/23/2010 09:00 AM in US Courthouse, Courtroom 1505, 1100 Commerce St., Dallas, TX,

DATE FILED	ECF NO.	DOCKET TEXT
		75242-1310 before Judge David C Godbey. (Counsel is advised multiple NEFs may be received for this filing.) (Ordered by Judge David C Godbey on 8/20/2010) (jkm) (Entered: 08/20/2010)
09/23/2010		ELECTRONIC Minute Entry for proceedings held before Judge David C Godbey: Status Conference held on 9/23/2010. Attorney Appearances: Receiver Kevin Sadler; Examiner - John Little; Plaintiff - David Reece, Phil Preis Ed Snyder, Ed Valdespino, Peter Morgenstern, Randall Pulman, Michael Stanley, McNeel Lane, James George, Joe Brophy; Defense - Stephen Malouf, Matt Acosta, Jonathan Polkes, Yvette Ostolaza, Jeff Chapman, Richard Archibald and Robert Plotkin. The examiner should submit a status report concerning the afternoon meeting of 9/23/2010. (Court Reporter: Linda Robbins) (No exhibits) Time in Court - 01:45. (jkm) (Entered: 09/27/2010) (jkm) (Entered: 09/30/2010)

DATE FILED	ECF NO.	DOCKET TEXT
09/30/2010	56	STATUS REPORT Examiner's Report No. 3 filed by John J Little. (jkm) (Entered: 10/13/2010)
02/17/2011	57	ORDER: Status Conference set for 3/28/2011 03:00 PM in US Courthouse, Courtroom 1351, 1100 Commerce St., Dallas, TX 75242-1310 before Judge David C Godbey. (Ordered by Judge David C Godbey on 2/17/2011) (jkm) (Entered: 02/18/2011)
05/10/2011	58	ORDER: Any party that has briefed SLUSA issues in a case proceeding under this MDL may call the Court's attention to that briefing by filing an appropriate notice in Roland within thirty (30) days of the date of this Order. It is unnecessary for the parties in Civil Action No. 3:09-CV-1600-N to provide such notice. Any other party desiring to apprise the Court of its views should file, within thirty (30) days of the date of this Order, a motion for leave to file an amicus brief, together with a copy of such proposed brief not to exceed twenty-five (25) pages. Motions for leave should indicate how

DATE FILED	ECF NO.	DOCKET TEXT
		the partys legal position differs from those of the parties in Roland and Troice v. Proskauer. (Ordered by Judge David C Godbey on 5/10/2011) (jkm) (Entered: 05/11/2011)
05/12/2011	59	ORDER CONSOLIDATING CASES: Member case(s) 3:10-CV-0225-N consolidated with lead case 3:10-CV-0224-N. All future docketing should be in lead case 3:10-CV-0224-N. (Ordered by Judge David C Godbey on 5/12/2011) (dnc) (Entered: 05/13/2011)
09/19/2011		Set MDL-2099 Flag. (Entered on 9/19/2011) (drh) (Entered: 09/19/2011)
05/18/2012	60	Opinion of USCA (certified copy) in accordance with USCA judgment Re: Notice of Appeal filed by Virginia McMorris,et al. The judgments are REVERSED. The Troice cases (3:10cv224) are remanded to the district court, and the Roland case is remanded to the State Court. (svc) (Entered: 05/18/2012)
05/18/2012	61	JUDGMENT/MANDATE of USCA as to Notice of Appeal

DATE FILED	ECF NO.	DOCKET TEXT
		filed by Virginia McMorris,et al. Case remanded to the district court for further proceedings. Issued as Mandate: 4/27/12. The electronic copy of the record has been recycled (svc)
05/18/2012		Notice that certified copies of 61 USCA Judgment/Mandate, 60 Opinion of USCA and docket sheet have been mailed to East Baton Rouge Parish, Clerk of Court per remand to state court from USCA5 re State Court Docket 581,480 (svc)

APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE 5TH CIRCUIT

Relevant Consolidated Docket Entries in Case Nos. 11-10932, 11-11031, & 11-11048

(A) *Roland/Farr v. Green*, No. 11-10932 (Lead Case)

DATE FILED	DOCKET TEXT
10/04/2011	PRIVATE CIVIL FEDERAL CASE docketed. NOA filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland; ET AL [11-10932] (NFD)
[DOCKET ENTRIES OMITTED]	
10/06/2011	OPPOSED MOTION filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland to expedite the appeal [6921349-2], to expedite briefing and oral argument [6921349-3]. Date of service: 10/06/2011 via email - Attorney for Appellants: Burkhalter, Gordon, Preis; Attorney for Appellees: Ho, Marionneaux, Redmon, Newton; US mail Attorney for Appellee: Schwab [11-10932] (Phillip W. Preis)
[DOCKET ENTRIES OMITTED]	
10/11/2011	RESPONSE DUE to motion to

DATE FILED	DOCKET TEXT
	expedite appeal filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr in 11-10932 [6921349-2], motion to expedite brief and oral argument filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr in 11-10932 [6921349-3]. Response/Opposition due on 10/17/2011 [11-10932] (MCS)
10/13/2011	NOTICE RECEIVED FROM DISTRICT COURT. ROA Certified by DCt, FILED Certified ROA due deadline satisfied. [11-10932] (Cases 3:10-CV-224 and 3:10-CV-225) (MCS)
10/14/2011	COURT ORDER that appellants' opposed motion to expedite the appeal is granted [6921349-2] ; granting appellants' opposed motion to expedite briefing and oral argument is granted. The clerk shall issue a briefing schedule that will permit the case to be heard on the February oral argument calendar [6921349-3]. Case should proceed directly to OA Calendar? Yes Judge(s): CDK. [11-10932] (MCS)
10/14/2011	CASE CAPTION updated. Appellee

DATE FILED	DOCKET TEXT
	Et Al added to case. [11-10932] (NFD)
10/14/2011	BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 11/14/2011 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland.. Appellee's Brief due on 12/05/2011 for Appellees Certain Underwriters at Lloyds London, Grady Layfield, Hank Mills, Russ Newton, S.E.I. Investments Company, John Schwab, Jim Weller.. Reply Brief due on 12/15/2011 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland. [11-10932] (MCS)
10/28/2011	LETTER filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland Letter from Phillip Preis to Clerk regarding forthcoming appeals of related Troice v. Proskauer Rose, LLP et al. and Troice v. Willis of Colorado, Inc., both of which deal with the applicability of SLUSA in the context of Stanford-related cases. Date of Service: 10/28/2011 via email - Attorney for Appellants: Burkhalter, Gordon, Graham, Preis; Attorney for

DATE FILED	DOCKET TEXT
	Appellees: Ho, Marionneaux, Redmon, Newton; US mail - Attorney for Appellee: Schwab [11-10932] (Phillip W. Preis)
11/02/2011	CASE TENTATIVELY calendared for oral argument for the week of 02/06/2012. [11-10932] (GAM)
[DOCKET ENTRIES OMITTED]	
11/04/2011	OPPOSED MOTION filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland to supplement the record on appeal with Declaration of Karyl Van Tassel, Doc. 21-20 from In Re Stanford Int'l Bank, Ltd., Dkt. 3:09-CV-721, US District Court, Northern District of Texas, Dallas Division. [6943504-2]. Date of service: 11/04/2011 via email - Attorney for Appellants: Burkhalter, Gordon, Graham, Preis; Attorney for Appellees: Cooney, Ho, Marionneaux, Redmon, Newton; US mail - Attorney for Appellee: Schwab [11-10932] (Phillip W. Preis)
11/07/2011	CLERK ORDER granting motion to supplement the record on appeal filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E.

DATE FILED	DOCKET TEXT
	Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr [6943504-2]. [11-10932] (MVM)
11/07/2011	Request issued to district court to CERTIFY THE SUPPLEMENTAL RECORD ON APPEAL.Notice of Certified ROA Due on 11/22/2011. [11-10932] (MVM)
11/08/2011	NOTICE RECEIVED FROM DISTRICT COURT.Sup ROA Cert by DCt, FILEDCertified ROA due deadline satisfied. [11-10932] (MCS)
11/09/2011	OPPOSED MOTION filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland to consolidate cases 11-10932, 11-11031, and 11-11048. Date of service: 11/09/2011 via email - Attorney for Appellants: Burkhalter, Gordon, Graham, Preis; Attorney for Appellees: Cooney, Ho, Marionneaux, Redmon, Newton; US mail Attorney for Appellee: Schwab [11-10932] (Phillip W. Preis)
11/10/2011	APPELLANT'S BRIEF FILED by Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland Date of service: 11/10/2011 via

DATE FILED	DOCKET TEXT
	email - Attorney for Appellants: Burkhalter, Gordon, Graham, Preis; Attorney for Appellees: Cooney, Ho, Marionneaux, Redmon, Newton; US mail - Attorney for Appellee: Schwab [11-10932] REVIEWED AND/OR EDITED. APPELLANT'S BRIEF FILED by Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland # of Copies Provided: 0 A/Pet's Brief deadline satisfied. Paper Copies of Brief due on 11/21/2011 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland. [11-10932] (Phillip W. Preis)
11/10/2011	RECORD EXCERPTS FILED by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland. Date of service: 11/10/2011 via email - Attorney for Appellants: Burkhalter, Gordon, Graham, Preis; Attorney for Appellees: Cooney, Ho, Marionneaux, Redmon, Newton; US mail - Attorney for Appellee: Schwab [11-10932] REVIEWED AND/OR EDITED.. # of Copies Provided: 0 Paper Copies of Record Excerpts due on 11/21/2011 for Appellants T. E. Bowden Sr., Thomas

DATE FILED	DOCKET TEXT
	Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland. [11-10932] (Phillip W. Preis)
11/11/2011	CLERK ORDER granting motion to adopt motion to consolidate cases 11-11031, 11048 with 11-10932 filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr [6947009-2] in 11-10932, granting motion to consolidate cases 11-11031, 11-11048 with 11-10932 filed by Appellee Proskauer Rose, L.L.P. [6947137-2] in 11-11031, granting motion to consolidate cases11-11031, 11-11048 with 11-10932 filed by Appellants Mr. Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Mr. Daniel Gomez Ferreiro, Mr. Manuel Canabal, Ms. Martha Diaz and Ms. Paula Gilly-Flores [6947442-2] in 11-11048; [6948964-2]. [11-10932, 11-11031, 11-11048] (MCS)
11/11/2011	BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 11/23/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores,

DATE FILED	DOCKET TEXT
	Promotora Villa Marino, CA.. Appellee's Brief due on 12/23/2011 for Appellees Tiffany Angelle, Certain Underwriters at Lloyds London, Et Al, James Fontenot, Jason Green, Charles Jantzi, Thomas Newland, Grady Layfield, Hank Mills, Russ Newton, S.E.I. Investments Company, John Schwab, Jim Weller, P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom, Amy S. Baranoucky, Bowen, Miclette & Britt, Incorporated, Mark Daniel Manela, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated, Robert S. Winter.. Reply Brief due on 01/13/2012 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland, Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (MCS)
[DOCKET ENTRIES OMITTED]	
11/23/2011	LETTER filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G.

DATE FILED	DOCKET TEXT
	Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland advising Roland and Farr Appellants will not file supplemental appellant brief; referencing clerk order to extend time to file appellant's supp brief [6948964-2]. Date of Service: 11/23/2011 via email Attorney for Appellants: Buncher, Burkhalter, Gordon, Graham, Kerr, Kitner, Preis, Snyder, Valdespino; Attorney for Appellees: Blanchard, Burger, Collins, Cooney, Foster, Gerger, Hartmann, Ho, Manela, Marionneaux, Mateja, Nesbitt, Ostolaza, Reasoner, Redmon, Schwab, Newton [11-10932, 11-11031, 11-11048] (Phillip W. Preis)
[DOCKET ENTRIES OMITTED]	
11/23/2011	APPELLANT'S BRIEF FILED by Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11031, Mr. Manuel Canabal, Ms. Martha Diaz, Mr. Daniel Gomez Ferreiro, Ms. Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11048 Date of service: 11/23/2011 via email Attorney for Appellants: Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Snyder, Valdespino; Attorney for Appellees:

DATE FILED	DOCKET TEXT
	Blanchard, Burger, Collins, Cooney, Foster, Gerger, Hartmann, Ho, Manela, Marionneaux, Mateja, Nesbitt, Ostolaza, Reasoner, Redmon, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. Brief is NOT sufficient as the Title does not match caption.. # of Copies Provided: 0. A/Pet's Brief deadline satisfied. Sufficient Brief due on 12/07/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (Edward Frazer Valdespino)
11/23/2011	RECORD EXCERPTS FILED by Appellants Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11031, Appellants Mr. Manuel Canabal, Ms. Martha Diaz, Mr. Daniel Gomez Ferreiro, Ms. Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11048. Date of service: 11/23/2011 via email Attorney for Appellants: Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Snyder, Valdespino; Attorney for Appellees: Blanchard, Burger, Collins, Cooney,

DATE FILED	DOCKET TEXT
	Foster, Gerger, Hartmann, Ho, Manela, Marionneaux, Mateja, Nesbitt, Ostolaza, Reasoner, Redmon, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED.. Record Excerpts NOT Sufficient as the Title does not match caption. # of Copies Provided: 0 Sufficient Record Excerpts due on 12/07/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA [11-10932, 11-11031, 11-11048] (Edward Frazer Valdespino)
[DOCKET ENTRIES OMITTED]	
11/30/2011	BRIEF MADE SUFFICIENT filed by Appellants Mr. Samuel Troice, Mr. Horacio Mendez, Ms. Annalisa Mendez and Punga Punga Financial, Limited, Appellants Mr. Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Mr. Daniel Gomez Ferreiro, Mr. Manuel Canabal, Ms. Martha Diaz and Ms. Paula Gilly-Flores in 11-10932, 11-11031, 11-11048 [6957582-2]. Sufficient Brief deadline satisfied. Paper Copies of Brief due on 12/05/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga

DATE FILED	DOCKET TEXT
	Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (MVM)
11/30/2011	RECORD EXCERPTS MADE SUFFICIENT filed by Appellants Mr. Samuel Troice, Mr. Horacio Mendez, Ms. Annalisa Mendez and Punga Punga Financial, Limited, Appellants Mr. Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Mr. Daniel Gomez Ferreiro, Mr. Manuel Canabal, Ms. Martha Diaz and Ms. Paula Gilly-Flores in 11-10932, 11-11031, 11-11048 [6957587-2]. Sufficient Record Excerpts deadline satisfied. Paper Copies of Record Excerpts due on 12/05/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (MVM)
11/30/2011	MOTION by John J. Little, Examiner; Official Stanford Investors Committee to file amicus brief [6961637-2] Date of service: 11/30/2011 via email - Attorney for Appellants: Blakeway,

DATE FILED	DOCKET TEXT
	Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Snyder, Valdespino; Attorney for Appellees: Burger, Collins, Cooney, Foster, Gerger, Ho, Manela, Nesbitt, Nielsen, Ostolaza, Reasoner, Redmon; US mail Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Blanchard, Hartmann, Mateja, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. MOTION by Not Parties John J. Little and Official Stanford Investors Committee in 11-10932, Not Parties John J. Little and Official Stanford Investors Committee in 11-11031 and Not Parties John J. Little and Official Stanford Investors Committee in 11-11048 to file amicus brief [6961637-2] [11-10932, 11-11031, 11-11048] (John J. Little)
11/30/2011	AMICUS CURIAE BRIEF FILED by John J. LIttle, Court-Appointed Examiner; and Official Stanford Investors Committee. Date of service: 11/30/2011 via email - Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Snyder, Valdespino; Attorney for Appellees: Burger, Collins, Cooney, Foster, Gerger, Ho, Manela, Nesbitt, Nielsen, Ostolaza, Reasoner, Redmon; US mail Attorney for Appellants: Buncher, Kitner; Attorney for

DATE FILED	DOCKET TEXT
	Appellees: Blanchard, Hartmann, Mateja, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. AMICUS CURIAE BRIEF FILED Consent is Not Necessary a Motion has been Granted # of Copies Provided: 0 Paper Copies of Brief due on 12/12/2011 for Amici Curiae John J. Little, Official Stanford Investors Committee. [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. AMICUS CURIAE BRIEF FILED by Mr. John J. Little and Official Stanford Investors Committee in 11-10932, 11-11031, 11-11048. Consent is Not Necessary a Motion has been Granted # of Copies Provided: 0 [11-10932, 11-11031, 11-11048] (John J. Little)
11/30/2011	MOTION by Public Investors Arbitration Bar Association to file amicus brief [6961662-2] Date of service: 11/30/2011 via email - Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Snyder, Valdespino; Attorney for Appellees: Burger, Collins, Cooney, Foster, Gerger, Ho, Manela, Nesbitt, Nielsen, Ostolaza, Reasoner, Redmon; US mail Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Blanchard, Hartmann, Mateja, Schwab [11-10932, 11-11031, 11-

DATE FILED	DOCKET TEXT
	11048] REVIEWED AND/OR EDITED. MOTION by Not Party Public Investors Arbitration Bar Association in 11-10932, Not Party Public Investors Arbitration Bar Association in 11-11031 and Not Party Public Investors Arbitration Bar Association in 11-11048 to file amicus brief [6961662-2] [11-10932, 11-11031, 11-11048] (Royal B. Lea III)
11/30/2011	AMICUS CURIAE BRIEF FILED by Mr. Edward C. Snyder for Mr. Samuel Troice, Mr. Horacio Mendez, Ms. Annalisa Mendez and Punga Punga Financial, Limited in 11-11031. Date of service: 11/30/2011 via email Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Snyder, Valdespino; Attorney for Appellees: Burger, Collins, Cooney, Foster, Gerger, Ho, Manela, Nesbitt, Nielsen, Ostolaza, Reasoner, Redmon; US mail - Attorney for Appellant: Kitner; Attorney for Appellees: Blanchard, Hartmann, Mateja, Schwab, Newton [11-10932, 11-11031, 11-11048] (Amicus Curiae Brief of Certain Members of Congress) REVIEWED AND/OR EDITED. AMICUS CURIAE BRIEF FILED by Certain Members of Congress in 11-10932, 11-11031, 11-11048. Consent is Not Necessary as Amicus is a Government Entity # of

DATE FILED	DOCKET TEXT
	Copies Provided: 0 Paper Copies of Brief due on 12/19/2011 for Amicus Curiae Certain Members of Congress. [11-10932, 11-11031, 11-11048] (Edward C. Snyder)
[DOCKET ENTRIES OMITTED]	
12/01/2011	MOTION by Ralph S. Janvey, Receiver to file amicus brief [6962611-2] Date of service: 12/01/2011 via email - Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Snyder, Valdespino; Attorney for Appellees: Burger, Collins, Cooney, Foster, Gerger, Held, Ho, Manela, Nesbitt, Nielsen, Ostolaza, Reasoner, Redmon; US mail Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Blanchard, Hartmann, Mateja, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. MOTION by Not Party Ralph S. Janvey in 11-10932, Not Party Ralph S. Janvey in 11-11031 and Not Party Ralph S. Janvey in 11-11048 to file amicus brief [6962611-2] for leave to file amicus brief out of time [6962611-3] Brief Tendered? Yes [11-10932, 11-11031, 11-11048] (Ben L. Krage)
[DOCKET ENTRIES OMITTED]	
12/06/2011	COURT ORDER granting motion to

DATE FILED	DOCKET TEXT
	file amicus brief [6961637-2], granting motion to file amicus brief [6961662-2], granting motion to file amicus brief [6962611-2] filed by John J. Little, Official Stanford Investors Committee and Public Investors Arbitration Bar Association in 11-10932 and Ralph S. Janvey in 11-11048; granting motion to file brief out of time [6962611-3] Judge(s): CDK. [11-10932, 11-11031, 11-11048] (MVM)
12/06/2011	CASE CAPTION updated. Party information modified for Ralph S. Janvey in 11-11031. Update: Party shold have been updated when order was filed.. [11-10932, 11-11031, 11-11048] (MVM)
12/06/2011	CASE CAPTION updated. Involvement terminated for Amicus Curiae Public Investors Arbitration Bar Association in 11-10932, Not Party Public Investors Arbitration Bar Association in 11-11031 and Not Party Public Investors Arbitration Bar Association in 11-11048. [11-10932, 11-11031, 11-11048] (MVM)
12/06/2011	AMICUS CURIAE BRIEF FILED by Public Investors Arbitration Bar Association in 11-10932, 11-11031, 11-11048. Consent is Not Necessary a Motion has been Granted # of Copies Provided: 0 Paper Copies of Brief due

DATE FILED	DOCKET TEXT
	on 12/12/2011 for Amicus Curiae Public Investors Arbitration Bar Association. [11-10932, 11-11031, 11-11048] (MVM)
[DOCKET ENTRY OMITTED]	
12/06/2011	AMICUS CURIAE BRIEF FILED by Mr. Ralph S. Janvey in 11-10932, 11-11031, 11-11048. Consent is Not Necessary a Motion has been Granted # of Copies Provided: 0 Paper Copies of Brief due on 12/20/2011 for Amicus Curiae Ralph S. Janvey. [11-10932, 11-11031, 11-11048] (MVM)
[DOCKET ENTRIES OMITTED]	
12/21/2011	CASE CALENDARED for oral argument on Tuesday, 02/07/2012 in New Orleans in the East Courtroom -- AM session. In accordance with our policy, lead counsel only will receive via email at a later date a copy of the court's docket and an acknowledgment form. All other counsel of record should monitor the court's website for the posting of the oral argument calendars.. [11-10932, 11-11031, 11-11048] (SME)
12/22/2011	CASE CAPTION updated. Involvement terminated for Appellee Mark Daniel Manela in 11-11048. Reason: Party was erroneously added to DC Docket sheet. District Court has been contacted and has advised

DATE FILED	DOCKET TEXT
	that they will be removing Mr. Manela from the docket as a movant. [11-10932, 11-11031, 11-11048] (MVM)
[DOCKET ENTRIES OMITTED]	
12/23/2011	APPELLEE'S BRIEF FILED by Appellees Willis Limited and Willis of Colorado Incorporated and Appellees Bowen, Miclette & Britt, Inc. Date of service: 12/23/2011 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail Attorney for Appellees: Marionneaux, Schwab, Newton [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. APPELLEE'S BRIEF FILED # of Copies Provided: 0 E/Res's Brief deadline satisfied. Paper Copies of Brief due on 12/28/2011 for Appellees Bowen, Miclette & Britt, Incorporated, Willis Group Holdings Limited, Willis Limited, Willis of

DATE FILED	DOCKET TEXT
	Colorado Incorporated. [11-10932, 11-11031, 11-11048] (Jonathan D. Polkes)
12/23/2011	RECORD EXCERPTS FILED by Appellees Willis Limited and Willis of Colorado Incorporated. and Appellee Bowen, Miclette & Britt, Inc. Date of service: 12/23/2011 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail Attorney for Appellees: Marionneaux, Schwab, Newton [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED.. # of Copies Provided: 0 Paper Copies of Record Excerpts due on 12/28/2011 for Appellees Bowen, Miclette & Britt, Incorporated, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated. [11-10932, 11-11031, 11-11048] (Jonathan D. Polkes)
12/23/2011	APPELLEE'S BRIEF FILED by

DATE FILED	DOCKET TEXT
	Appellee S.E.I. Investments Company Date of service: 12/23/2011 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellee: Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. APPELLEE'S BRIEF FILED by Appellee S.E.I. Investments Company in 11-10932 # of Copies Provided: 0 E/Res's Brief deadline satisfied. Paper Copies of Brief due on 01/03/2012 for Appellee S.E.I. Investments Company. [11-10932, 11-11031, 11-11048] (Gordon Cooney Jr.)
12/23/2011	RULE 28(I) LETTER FILED by Appellee Mr. Robert S. Winter Date of service: 12/23/2011 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan,

DATE FILED	DOCKET TEXT
	Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail Attorney for Appellant: Buncher; Attorney for Appellees: Schwab, Newton [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. FILING LETTER OF Mr. Robert S. Winter in 11-11048 dated 12/23/2011 adopting brief of Appellees Bowen, Miclette & Britt, Incorporated, Willis Group Holdings Limited, Willis Limited and Willis of Colorado Incorporated in 11-11048 (SEND TO SCREENING JUDGE AND PANEL) E/Res's Brief deadline satisfied [11-10932, 11-11031, 11-11048] (Paul Kenneth Nesbitt)
12/23/2011	APPELLEE'S BRIEF FILED by Appellee Proskauer Rose, L.L.P. and Appellees Chadbourne & Parke LLP, Thomas V. Sjoblom and P. Mauricio Alvarado Date of service: 12/23/2011 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen,

DATE FILED	DOCKET TEXT
	Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Schwab, Newton [11-11031, 11-10932, 11-11048] REVIEWED AND/OR EDITED. APPELLEE'S BRIEF FILED by Appellees Mr. P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership and Mr. Thomas V. Sjoblom in 11-11031 Brief NOT Sufficient as it requires an Appearance Form from counsel signing the brief (Davis Isaak.) # of Copies Provided: 0. E/Res's Brief deadline satisfied. Paper Copies of Brief due on 01/03/2012 for Appellees P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom.. Sufficient Brief due on 01/06/2012 for Appellees P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom. [11-11031, 11-10932, 11-11048] (Rajesh Sebastian James)
12/23/2011	RECORD EXCERPTS FILED by Appellee Proskauer Rose, L.L.P.. and by Appellees Chadbourne & Parke LLP, Thomas V. Sjoblom & P. Mauricio Alvarado Date of service: 12/23/2011 via email Attorney for Amici Curiae: Krage, Lea, Little,

DATE FILED	DOCKET TEXT
	Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger. Hartmann, Held, Ho, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Schwab, Newton [11-11031, 11-10932, 11-11048] REVIEWED AND/OR EDITED. RECORD EXCERPTS FILED by Appellees Mr. P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership and Mr. Thomas V. Sjoblom in 11-11031. # of Copies Provided: 0 Sufficient Record Excerpts due on 01/06/2012 (Record Excerpts are in excess of the 40 page limit, SEE NOTICE FOR INSTRUCTIONS) for Appellees P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom [11-11031, 11-10932, 11-11048] (Rajesh Sebastian James)
[DOCKET ENTRIES OMITTED]	
01/03/2012	BRIEF MADE SUFFICIENT filed by Appellees Proskauer Rose, L.L.P., Mr. Thomas V. Sjoblom, Mr. P. Mauricio

DATE FILED	DOCKET TEXT
	Alvarado and Chadbourne and Parke, Limited Liability Partnership in 11-11031, 11-10932, 11-11048 [6980055-2]. Sufficient Brief deadline satisfied [11-11031, 11-10932, 11-11048] (SAT)
01/03/2012	RECORD EXCERPTS MADE SUFFICIENT filed by Appellees Proskauer Rose, L.L.P., Mr. Thomas V. Sjoblom, Mr. P. Mauricio Alvarado and Chadbourne and Parke, Limited Liability Partnership in 11-11031, 11-10932, 11-11048 [6980056-2]. Sufficient Record Excerpts deadline satisfied [11-11031, 11-10932, 11-11048] (SAT)
[DOCKET ENTRIES OMITTED]	
01/06/2012	NOTICE FILED by Appellee Certain Underwriters at Lloyds London that they will not be filing an Appellee's brief Date of Service: 01/06/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for

DATE FILED	DOCKET TEXT
	Appellee: Schwab (SEND TO SCREENING JUDGE AND PANEL) [11-10932, 11-11031, 11-11048] (Marshall M. Redmon)
[DOCKET ENTRY OMITTED]	
01/10/2012	MOTION filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland for additional argument time [6990516-2]. Date of service: 01/10/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Marionneaux, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwab, Schwartz, Sims, Newton [11-10932, 11-11031, 11-11048] (Phillip W. Preis)
01/10/2012	NOTICE FILED by Appellee Ms. Amy S. Baranoucky that they will not be filing an Appellee's brief Date of Service: 01/10/2012 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for

DATE FILED	DOCKET TEXT
	Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Marionneaux, Schwab (SEND TO SCREENING JUDGE AND PANEL) [11-11048, 11-10932, 11-11031] REVIEWED AND/OR EDITED. NOTICE FILED by Appellee Ms. Amy S. Baranoucky in 11-11048 that they will not be filing an Appellee's brief E/Res's Brief deadline canceled (SEND TO SCREENING JUDGE AND PANEL) [11-11048, 11-10932, 11-11031] (Mark Daniel Manela)
[DOCKET ENTRIES OMITTED]	
01/12/2012	APPELLANT'S REPLY BRIEF FILED by Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland Date of service: 01/12/2012 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants:

DATE FILED	DOCKET TEXT
	Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Marionneaux, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwab, Schwartz, Sims, Whittlesey, Newton [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. # of Copies Provided: 0 Reply Brief deadline satisfied. Paper Copies of Brief due on 01/18/2012 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland. [11-10932, 11-11031, 11-11048] (Phillip W. Preis)
01/13/2012	COURT ORDER granting motion for additional argument time of 10 minutes per side filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr [6990516-2] [11-10932, 11-11031, 11-11048] (SME)
01/13/2012	RECORD ON APPEAL REQUESTED FROM DISTRICT COURT. ROA due on 01/20/2012 [11-10932, 11-11031,

DATE FILED	DOCKET TEXT
	11-11048] (MVM)
01/13/2012	APPELLANT'S REPLY BRIEF FILED by Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11031, Mr. Manuel Canabal, Ms. Martha Diaz, Mr. Daniel Gomez Ferreiro, Ms. Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11048 Date of service: 01/13/2012 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Marionneaux, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwab, Schwartz, Sims, Whittlesey; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Marionneaux, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. # of Copies Provided: 0 Reply Brief deadline satisfied. Paper Copies of Brief due on 01/18/2012 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial,

DATE FILED	DOCKET TEXT
	Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (Edward Frazer Valdespino)
[DOCKET ENTRY OMITTED]	
01/17/2012	BRIEFING COMPLETE.E/Res's Brief deadline canceled [11-10932, 11-11031, 11-11048] (MBC)
01/17/2012	UNOPPOSED MOTION filed by Appellee Chadbourne and Parke, Limited Liability PartnershipKenneth P. Held to withdraw as counsel [6995254-2]. Date of service: 01/17/2012 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Foster, Gerger, Hartmann, Held, Ho, Isaak, James, Leffell, Manela, Marionneaux, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwab, Schwartz, Sims, Whittlesey [11-10932, 11-11031, 11-11048] (William D. Sims Jr.)
01/17/2012	CLERK ORDER granting motion to withdraw Kenneth P. Held as counsel

DATE FILED	DOCKET TEXT
	filed by Appellee Chadbourne and Parke, Limited Liability Partnership [6995254-2]. [11-10932, 11-11031, 11-11048] (MCS)
01/18/2012	LETTER OF ADVISEMENT. Reason: Advising the Parties of the Revised Caption [11-10932, 11-11031, 11-11048] (NFD)
[DOCKET ENTRY OMITTED]	
01/23/2012	RECORD ON APPEAL FILED. Electronic Pleadings, 10; ROA deadline satisfied. [11-10932] (MVM)
01/23/2012	1st SUPPLEMENTAL RECORD ON APPEAL FILED. Supp Electronic Pldg, 1; [11-10932] (MVM)
[DOCKET ENTRY OMITTED]	
02/06/2012	FILING LETTER OF Certain Members of Congress in 11-10932, 11-11031, 11-11048 dated 02/03/2012 adopting brief of Amicus Curiae in Support of Appellants' Brief filed November 30, 2011. (SEND TO SCREENING JUDGE AND PANEL) [11-10932, 11-11031, 11-11048] (CAG)
02/07/2012	ORAL ARGUMENT HEARD before Judges Reavley, Davis, Prado. Arguing Person Information Updated for: Gordon Cooney Jr. arguing for Appellee S.E.I. Investments Company; Arguing Person

DATE FILED	DOCKET TEXT
	Information Updated for: Peter Michael Jung arguing for Appellant Annalisa Mendez, Appellant Horacio Mendez, Appellant Limited Punga Punga Financial, Appellant Samuel Troice, Appellant Manuel Canabal, Appellant Martha Diaz, Appellant Daniel Gomez Ferreiro, Appellant Paula Gilly-Flores, Appellant CA Promotora Villa Marino; Arguing Person Information Updated for: Jonathan D. Polkes arguing for Appellee Willis Group Holdings Limited, Appellee Willis Limited, Appellee Willis of Colorado Incorporated; Arguing Person Information Updated for: Phillip W Preis arguing for Appellant T. E. Bowden, Sr., Appellant Thomas Bowden, Appellant Et Al, Appellant Leah Farr, Appellant G. Kendall Forbes, Appellant Michael J. Giambrone, Appellant James Roland; Arguing Person Information Updated for: James Paul Rouhandeh arguing for Appellee L.L.P. Proskauer Rose [11-10932, 11-11031, 11-11048] (SME)
02/14/2012	SUPPLEMENTAL AUTHORITIES (FRAP 28j) FILED by Appellee Proskauer Rose, L.L.P. on behalf of Appellees Date of Service: 02/14/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher,

DATE FILED	DOCKET TEXT
	Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Duplantis, Foster, Gerger, Hartmann, Ho, Isaak, James, Leffell, Manela, Marionneaux, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwab, Schwartz, Sims, Whittlesey, Newton [11-11031, 11-10932, 11-11048] REVIEWED AND/OR EDITED. (SEND TO SCREENING JUDGE AND PANEL) [11-11031, 11-10932, 11-11048] (James Paul Rouhandeh)
02/20/2012	RESPONSE filed by Appellants Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11031, Appellants Mr. Manuel Canabal, Ms. Martha Diaz, Mr. Daniel Gomez Ferreiro, Ms. Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11048 to the 28j letter filed by Appellee Proskauer Rose, L.L.P. in 11-10932, 11-11031, 11-11048 [7017703-2]. Date of Service: 02/20/2012 via email Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis,

DATE FILED	DOCKET TEXT
	Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Duplantis, Foster, Gerger, Hartmann, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims, Whittlesey [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. to the 28j letter filed by Appellee Proskauer Rose, L.L.P. in 11-10932, 11-11031, 11-11048 [7017703-2] [11-10932, 11-11031, 11-11048] (Peter Michael Jung)
03/19/2012	PUBLISHED OPINION FILED. [11-10932 Reversed & Remanded 11-11031 Reversed & Remanded 11-11048 Reversed & Remanded] Judge: TMR , Judge: WED , Judge: ECP Mandate pull date is 04/09/2012 [11-10932, 11-11031, 11-11048] (RMF)
03/19/2012	JUDGMENT ENTERED AND FILED. [11-10932] (RMF)
03/20/2012	REVISED PUBLISHED OPINION FILED. [7041714-2] [11-10932, 11-11031, 11-11048] (RMF)
03/29/2012	BILL OF COSTS filed by Appellants Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice in 11-11031, Appellants Punga Punga Financial, Limited and Mr. Samuel

DATE FILED	DOCKET TEXT
	Troice in 11-11048. [11-10932, 11-11031, 11-11048] (Judith R. Blakeway)
03/30/2012	BILL OF COSTS filed by Appellants Mr. T. E. Bowden, Sr., Mr. Thomas Bowden, Appellee Et Al, Ms. Leah Farr, Mr. G. Kendall Forbes, Mr. Michael J. Giambrone and Mr. James Roland. [11-10932, 11-11031, 11-11048] (Charles Malcolm Gordon Jr.)
04/02/2012	PETITION filed by Appellees Willis Limited and Willis of Colorado Incorporated, Willis Group Holdings Limited, and Bowen, Miclette & Britt, Inc. for rehearing en banc [7053766-2]. Date of Service: 04/02/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Duplantis, Foster, Gerger, Hartmann, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims, Whittlesey; US mail Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Marionneaux, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED. PETITION filed by Willis Limited,

DATE FILED	DOCKET TEXT
	Willis of Colorado Incorporated, Appellee Willis Group Holdings Limited, and Bowen, Miclette, & Britt, Incorporated in 11-11048 for rehearing en banc [7053766-2] Mandate pull date canceled.. Paper Copies of Rehearing due on 04/09/2012 for Appellees Bowen, Miclette & Britt, Incorporated, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated.. Date of Service: 04/03/2012 [11-10932, 11-11031, 11-11048] (Jonathan D. Polkes)
04/02/2012	PETITION filed by Appellee S.E.I. Investments Company for rehearing en banc [7053772-2]. Date of Service: 04/02/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Burkhalter, Gordon, Graham, Jung, Kerr, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Duplantis, Foster, Gerger, Hartmann, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims, Whittlesey; US mail - Attorney for Appellants: Buncher, Kitner; Attorney for Appellees: Marionneaux, Schwab [11-10932, 11-11031, 11-11048] REVIEWED AND/OR EDITED.

DATE FILED	DOCKET TEXT
	PETITION filed by Appellee S.E.I Investments Company in 11-10932 for rehearing en banc [7053772-2] Paper Copies of Rehearing due on 04/09/2012 for Appellee S.E.I. Investments Company.. Date of Service: 04/02/2012 [11-10932, 11-11031, 11-11048] (Gordon Cooney Jr.)
04/02/2012	PETITION filed by Appellee Proskauer Rose, L.L.P. , Appellee Thomas V. Sjoblom, and Appellee Chadbourne & Parke LLP for rehearing en banc [7053785-2]. Date of Service: 04/02/2012 via email - Attorney for Amici Curiae: Krage, Lea, Little, Snyder; Attorney for Appellants: Blakeway, Buncher, Burkhalter, Gordon, Graham, Jung, Kerr, Kitner, Preis, Valdespino; Attorney for Appellees: Beller, Burger, Caplan, Collins, Cooney, Duplantis, Foster, Gerger, Hartmann, Ho, Isaak, James, Leffell, Manela, Mateja, Michael, Nesbitt, Nielsen, Ostolaza, Polkes, Reasoner, Redmon, Rouhandeh, Schwartz, Sims, Whittlesey; US mail - Attorney for Appellees: Marionneaux, Schwab, Newton [11-11031, 11-10932, 11-11048] REVIEWED AND/OR EDITED. PETITION filed by Appellees Chadbourne and Parke, Limited Liability Partnership and Mr. Thomas V. Sjoblom in 11-11031 for

DATE FILED	DOCKET TEXT
	rehearing en banc [7053785-2] Number of Copies:0.. Date of Service: 04/02/2012 [11-11031, 11-10932, 11-11048] (James Paul Rouhandeh)
[DOCKET ENTRIES OMITTED]	
04/19/2012	COURT ORDER denying petition for rehearing en banc filed by Appellees Willis of Colorado Incorporated, Willis Group Holdings Limited and Willis Limited [7053766-2], denying petition for rehearing en banc filed by Appellee S.E.I. Investments Company [7053772-2], denying petition for rehearing en banc filed by Appellees Proskauer Rose, L.L.P., Mr. Thomas V. Sjoblom and Chadbourne and Parke, Limited Liability Partnership [7053785-2] Without Poll. Mandate pull date is 04/26/2012 [11-10932, 11-11031, 11-11048] (MVM)
04/27/2012	MANDATE ISSUED. Mandate pull date satisfied. The Bill of Costs is issued with the mandate. [11-10932, 11-11031, 11-11048] (CNF)
07/23/2012	SUPREME COURT NOTICE that petition for writ of certiorari [7141477-2] was filed by Appellee Chadbourne and Parke, Limited Liability Partnership in 11-11031 on 07/18/2012. Supreme Court Number: 12-79. [11-11031, 11-10932, 11-11048] (LGL)

DATE FILED	DOCKET TEXT
07/24/2012	SUPREME COURT NOTICE that petition for writ of certiorari [7142751-2] was filed by Appellee Proskauer Rose, L.L.P. on 07/18/2012. Supreme Court Number: 12-88. [11-11031] (CAV)
07/24/2012	SUPREME COURT NOTICE that petition for writ of certiorari [7142766-2] was filed by Appellees Ms. Amy S. Baranoucky, Bowen, Miclette & Britt, Incorporated, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated and Mr. Robert S. Winter on 07/18/2012. Supreme Court Number: 12-86. [11-11048] (CAV)
02/04/2013	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellee Chadbourne and Parke, Limited Liability Partnership in 11-11031 on 01/18/2013. [7286166-1] [11-11031] (CAV)
02/04/2013	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellee Proskauer Rose, L.L.P. in 11-11031 on 01/18/2013. [7286172-1] [11-11031] (CAV)
02/04/2013	SUPREME COURT ORDER received granting petition for writ of certiorari filed by Appellees Bowen, Miclette & Britt, Incorporated, Mr. Robert S. Winter, Willis of Colorado,

DATE FILED	DOCKET TEXT
	Incorporated, Willis Group Holdings Limited, Ms. Amy S. Baranoucky and Willis Limited in 11-11048 on 01/18/2013. [7286178-1] [11-11048] (CAV)

(B) *Samuel Troice v. Proskauer Rose LLP*, No. 11-11031

DATE FILED	DOCKET TEXT
10/31/2011	PRIVATE CIVIL DIVERSITY CASE docketed. NOA filed by Appellants Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice [11-11031] (MVM)
11/07/2011	CASE CAPTION updated. Additional appeal filed. [6944259-2] NOA filed on 10/28/11 by Appellants Ms. Annalisa Mendez, Mr. Horacio Mendez, Punga Punga Financial, Limited and Mr. Samuel Troice. [6944259-1] [11-11031] (MVM)
[DOCKET ENTRY OMITTED]	
11/08/2011	CASE CAPTION updated. Party information modified for Chadbourne and Parke, Limited Liability Partnership in 11-11031.
[DOCKET ENTRY OMITTED]	
11/09/2011	OPPOSED MOTION filed by Appellee Proskauer Rose, L.L.P. to consolidate cases 11-10932 11-11031 11-11048 for briefing and oral argument purposes. Date of service: 11/09/2011 via email - Attorney for Appellants: Buncher, Kerr, Kitner, Snyder; Attorney for Appellees: Burger, Collins, Gerger, Mateja, Reasoner [11-11031] (Neil N. Burger)

DATE FILED	DOCKET TEXT
[DOCKET ENTRY OMITTED]	
11/11/2011	NOTICE RECEIVED FROM DISTRICT COURT. ROA Certified by DCt, FILED Certified ROA due deadline satisfied. [11-11031] (MCS)
11/11/2011	CLERK ORDER granting motion to adopt motion to consolidate cases 11-11031, 11048 with 11-10932 filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr [6947009-2] in 11-10932, granting motion to consolidate cases 11-11031, 11-11048 with 11-10932 filed by Appellee Proskauer Rose, L.L.P. [6947137-2] in 11-11031, granting motion to consolidate cases11-11031, 11-11048 with 11-10932 filed by Appellants Mr. Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Mr. Daniel Gomez Ferreiro, Mr. Manuel Canabal, Ms. Martha Diaz and Ms. Paula Gilly-Flores [6947442-2] in 11-11048; [6948964-2]. [11-10932, 11-11031, 11-11048] (MCS)
11/11/2011	BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 11/23/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel

DATE FILED	DOCKET TEXT
	Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA.. Appellee's Brief due on 12/23/2011 for Appellees Tiffany Angelle, Certain Underwriters at Lloyds London, Et Al, James Fontenot, Jason Green, Charles Jantzi, Thomas Newland, Grady Layfield, Hank Mills, Russ Newton, S.E.I. Investments Company, John Schwab, Jim Weller, P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom, Amy S. Baranoucky, Bowen, Miclette & Britt, Incorporated, Mark Daniel Manela, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated, Robert S. Winter.. Reply Brief due on 01/13/2012 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland, Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA.
[REMAINING DOCKET ENTRIES REFLECTED ON CONSOLIDATED DOCKET, REPRODUCED ABOVE]	

(C) *Troice v. Willis of Colorado*, No. 11-11048

DATE FILED	DOCKET TEXT
11/03/2011	PRIVATE CIVIL FEDERAL CASE docketed. NOA filed by Appellants Mr. Manuel Canabal, Mr. Daniel Gomez Ferreiro, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice [11-11048] (SAT)
11/09/2011	CASE CAPTION updated. Additional appeal filed on 11/3/11. [6947358-2] Parties added: Appellants Martha Diaz and Paula Gilly-Flores. NOA filed by Appellants Ms. Paula Gilly-Flores and Ms. Martha Diaz. [6947358-1] [11-11048] (SAT)
11/09/2011	UNOPPOSED MOTION filed by Appellants Mr. Manuel Canabal, Ms. Martha Diaz, Mr. Daniel Gomez Ferreiro, Ms. Paula Gilly-Flores, Promotora Villa Marino, CA, Punga Punga Financial, Limited and Mr. Samuel Troice to consolidate cases 11-10932 11-11031 11-11048 for briefing and oral argument purposes. Date of service: 11/09/2011 via email - Attorney for Appellant: Valdespino; Attorney for Appellees: Foster, Manela; US mail - Attorney for Appellees: Blanchard, Hartmann, Nesbitt, Ostolaza [11-11048] (Edward Frazer Valdespino)
[DOCKET ENTRY OMITTED]	

DATE FILED	DOCKET TEXT
11/11/2011	NOTICE RECEIVED FROM DISTRICT COURT. ROA Certified by DCt, FILED Certified ROA due deadline satisfied. [11-11048] (MCS)
11/11/2011	CLERK ORDER granting motion to adopt motion to consolidate cases 11-11031, 11048 with 11-10932 filed by Appellants Appellee Et Al, Mr. Thomas Bowden, Mr. James Roland, Mr. Michael J. Giambrone, Mr. T. E. Bowden, Sr., Mr. G. Kendall Forbes and Ms. Leah Farr [6947009-2] in 11-10932, granting motion to consolidate cases 11-11031, 11-11048 with 11-10932 filed by Appellee Proskauer Rose, L.L.P. [6947137-2] in 11-11031, granting motion to consolidate cases11-11031, 11-11048 with 11-10932 filed by Appellants Mr. Samuel Troice, Punga Punga Financial, Limited, Promotora Villa Marino, CA, Mr. Daniel Gomez Ferreiro, Mr. Manuel Canabal, Ms. Martha Diaz and Ms. Paula Gilly-Flores [6947442-2] in 11-11048; [6948964-2]. [11-10932, 11-11031, 11-11048] (MCS)
11/11/2011	BRIEFING NOTICE ISSUED. EXPEDITED SCHEDULE. A/Pet's Brief Due on 11/23/2011 for Appellants Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez

DATE FILED	DOCKET TEXT
	Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA.. Appellee's Brief due on 12/23/2011 for Appellees Tiffany Angelle, Certain Underwriters at Lloyds London, Et Al, James Fontenot, Jason Green, Charles Jantzi, Thomas Newland, Grady Layfield, Hank Mills, Russ Newton, S.E.I. Investments Company, John Schwab, Jim Weller, P. Mauricio Alvarado, Chadbourne and Parke, Limited Liability Partnership, Proskauer Rose, L.L.P., Thomas V. Sjoblom, Amy S. Baranoucky, Bowen, Miclette & Britt, Incorporated, Mark Daniel Manela, Willis Group Holdings Limited, Willis Limited, Willis of Colorado Incorporated, Robert S. Winter.. Reply Brief due on 01/13/2012 for Appellants T. E. Bowden Sr., Thomas Bowden, Et Al, Leah Farr, G. Kendall Forbes, Michael J. Giambrone, James Roland, Annalisa Mendez, Horacio Mendez, Punga Punga Financial, Limited, Samuel Troice, Manuel Canabal, Martha Diaz, Daniel Gomez Ferreiro, Paula Gilly-Flores, Promotora Villa Marino, CA. [11-10932, 11-11031, 11-11048] (MCS)
[REMAINING DOCKET ENTRIES REFLECTED ON CONSOLIDATED DOCKET, REPRODUCED ABOVE]	

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	§	**FILED FEB 17, 2009 CLERK, U.S. DISTRICT COURT**
v.	§	
STANFORD INTERNATIONAL BANK, LTD., STANFORD GROUP COMPANY, STANFORD CAPITAL MANAGEMENT, LLC, R. ALLEN STANFORD, JAMES M. DAVIS, and LAURA PENDERGEST-HOLT, Defendants.	§	Case No.: 3-09CV0298-L

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EX PARTE TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND OTHER EMERGENCY RELIEF

I. PRELIMINARY STATEMENT

Plaintiff Securities and Exchange Commission submits this Memorandum of Law in Support of its Motion for *Ex Parte* Temporary Restraining Order, Preliminary Injunction and Other Emergency Relief to halt a massive, ongoing fraud orchestrated by

Robert Allen Stanford and James M. Davis and executed through companies they control, Antiguan-based Stanford International Bank, Ltd. ("SIB"), and its affiliated Houston-based investment advisers, Stanford Group Company ("SGC") and Stanford Capital Management ("SCM").

Certificates of Deposit

Acting through a network of SGC financial advisers, SIB has sold approximately $8 billion of so-called "certificates of deposit" to investors by promising high interest rates. SIB claims that it offers high yields because of its unique investment strategy, which has purportedly enabled the bank to achieve double-digit returns on its investments over for past 15 years. As further described below, the bank's claims are improbable and unsubstantiated.

Further, SIB and its advisers have misrepresented to CD purchasers that their deposits are safe because the bank: (i) re-invests client funds primarily in "liquid" financial instruments (the "portfolio"); (ii) monitors the portfolio through a team of 20-plus analysts; and (iii) is subject to yearly audits by Antiguan regulators. Recently, as the market absorbed the news of Bernard Madoff's massive Ponzi scheme, SIB told investors that the bank had no "direct or indirect" exposure to Madoff's scheme.

These assurances are false. SIB's investment portfolio was not invested in liquid financial instruments or allocated in the manner described in its promotional material and public reports. Instead, a substantial portion of the bank's portfolio was invested in illiquid investments, such as private equity and real estate. Further, the vast majority

SIB's multi-billion dollar investment portfolio was not monitored by a team of analysts, but rather by two people – Allen Stanford and James Davis. And contrary to SIB's representations, the Antiguan regulator responsible for oversight of the bank's portfolio, the Financial Services Regulatory Commission, does not audit SIB's portfolio or verify the assets SIB claims in its financial statements. Finally, SIB has exposure to losses from the Madoff fraud scheme despite the bank's public assurances to the contrary.

SGC has also failed to disclose material facts to its advisery clients. In December 2008, SGC's clearing broker advised SGC that it would no longer facilitate wire transfer requests to SIB on behalf of existing clients who desire to purchase SIB CDs. The clearing broker decided to stop transferring money to the bank because of suspicions about the bank's purported investment returns and the overall lack of "transparency" into the bank's portfolio of investments. SGC never disclosed to clients that Pershing refused to transfer client funds to SIB.

During the past several weeks, the Securities and Exchange Commission subpoenaed SIB bank records and witnesses in an effort to account for the $8 billion of investor funds held by the bank. Among others, the SEC issued subpoenas to Stanford, Davis, and O.Y. Goswick, a SIB board member residing in Texas, who is purportedly responsible for "investments." None of these witnesses appeared for testimony or produced a single document. Further, SIB represented that Juan Rodriquez, SIB's president who resides in Antigua, would voluntarily appear in the United States to give sworn testimony to the SEC and account for investor funds.

Mr. Rodriguez failed to appear for testimony. The SEC did, however, take sworn testimony from Stanford Financial Group's Chief Investment Officer and SIB investment committee member (Laura Pendergest-Holt) and a former Senior Investment Officer (the "SIO"). Neither Ms. Pendergest-Holt nor the SIO could account for the $8 billion entrusted to the bank by its clients. In fact, Pendergest-Holt and the former SIO could only identify Stanford and Davis as people having knowledge and access to the vast majority of SIB's portfolio.

Stanford Allocation Strategy

Stanford's fraudulent conduct is not limited to the sale of CDs. Since 2005, SGC advisers have sold more than $1 billion of a proprietary mutual fund wrap program called Stanford Allocation Strategy ("SAS"), using materially false and misleading historical performance data. The false data has helped SGC grow the SAS program from less than $10 million in around 2004 to over $1 billion, generating fees for SGC/SCM (and ultimately Stanford) in excess of $25 million. And the fraudulent SAS performance was used to recruit registered financial advisers with significant books of business, who were then heavily incentivized to re-allocate their clients' assets to SIB's CD program.[1]

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[1] In addition to the antifraud violations described above, SIB, SGC and SCM violated Section 7(d) of the Investment Company Act, which prohibits foreign investment companies and their underwriters from selling securities in the U.S. without registering with the Commission. Had SIB complied with the law and registered as an investment company, SIB would have been subject to examination by the Commission.

Emergency Relief Is Appropriate

The SEC has learned that Allen Stanford, on or about February 6, 2009, imposed a "two-month moratorium" on CD redemptions, and instructed SGC advisers that the bank would not honor redemption requests from clients. Moreover, at least one SGC financial adviser misrepresented to a client that the Commission had frozen CD-related accounts for two months. [App. 672-73, 1118]. Finally, last week, SIB's counsel notified the Commission that he was withdrawing as counsel. [App. 1121]. In so doing, SIB's counsel advised the Commission that he and his law firm "disaffirm all prior oral and written representations" regarding Stanford Financial Group and its affiliates. [App. 1122].

The fraudulent scheme is ongoing. SIB is continuing to sell CDs. And SGC/SCM is continuing to sell SAS. Moreover, the vast majority of investor funds have not been accounted for and remain under the control of the Defendants. Investor funds and bank assets need to be located, secured and marshaled by a Receiver for the benefit of investors. Emergency relief is, therefore, necessary and appropriate in this matter.

To protect investors and to halt this fraudulent scheme, the Commission seeks: (1) an *ex parte* temporary restraining order and preliminary injunction against future violations by Defendants; (2) an immediate freeze of all assets of Defendants; (3) an order requiring Defendants to provide an immediate accounting; (4) a repatriation order; (5) an order that Stanford and Davis surrender their passports; (6) an order prohibiting the destruction of records; (7) an order expediting discovery; and

(8) the appointment of a Receiver to take control of the assets of the Defendants to marshal and preserve assets for the benefit of the investors defrauded by the Defendants.

II. DEFENDANTS

Stanford International Bank, Ltd. purports to be private international bank domiciled in St. John's, Antigua, West Indies. [App. 527, 859, 887]. SIB claims to serve 30,000 clients in 131 countries and holds $7.2 billion in assets under management. [App. 538].[2] SIB's multi-billion portfolio of investments is managed by the SFG's chief financial officer in Memphis, Tennessee. [App. 058, 388, 936]. Unlike a commercial bank, SIB does not loan money. [App. 50, 668, 862, 1011, 1017]. SIB sells the CD to U.S. investors through SGC, its affiliated investment adviser. [App 668].

Stanford Group Company, a Houston-based corporation, is registered with the Commission as a broker-dealer and investment adviser. [App. 585]. SGC has offices located throughout the U.S., including Dallas, Texas. [App. 928, 945]. SGC's principal business consists of sales of SIB-issued securities, marketed as "certificates of deposit." [App. 590, 668]. SGC is a wholly owned subsidiary of Stanford Group Holdings, Inc., which in turn is owned by Robert Allen Stanford ("Stanford"). [App. 46, 586, 942].

Stanford Capital Management, a registered investment adviser [App. 585], took over the management of the SAS program (formerly Mutual

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[2] SIB's Annual Report for 2007 states that SIB has 50,000 clients [App. 859].

Fund Partners) from SGC in early 2007. Stanford Capital Management markets the SAS program through SGC. [App. 679].

Robert Allen Stanford, a U.S. citizen, is the Chairman of the Board and sole shareholder of SIB and the sole director of SGC's parent company. [App. 46, 76, 586, 881-82].

James M. Davis, a U.S. citizen and resident of Baldwin, Mississippi and who offices in Memphis, Tennessee and Tupelo, Mississippi, is a director and chief financial officer of SFG and SIB. [App. 80, 881-82].

Laura Pendergest-Holt is the Chief Investment Officer of SIB-affiliate Stanford Financial Group and a member of SIB's investment committee. [App. 31, 74-75, 524]. She supervises a group of analysts in Memphis, Tupelo, and St. Croix who "oversee" performance of SIB's "Tier II" assets. [App. 80-81].

III. STATEMENT OF FACTS

A. The Stanford Empire

Allen Stanford has created a web of affiliated companies that exist and operate under the brand Stanford Financial Group ("SFG"). [App. 926-37]. According to the company's website, SFG is a privately-held group of companies that has in excess of $50 billion "under advisement." [www.stanfordfinancial.com].

SIB, one of SFG's affiliates, is a private, offshore bank that purports to have an independent Board of Directors, an Investment Committee, a Chief Investment Officer and a team of research analysts. [App. 524, 882, 895]. While SIB is domiciled in Antigua, a small group of SFG employees who

maintain offices in Memphis, Tennessee, and Tupelo, Mississippi, purportedly monitor the bank's assets. [App. 80-81, 388].

SIB is operated by a close-nit circle of Stanford's family, friend and their confidants. For example, Davis was Stanford's college classmate at Baylor University in the 1970s. SIB's Board of Directors includes Davis, Stanford, Stanford's father James A. Stanford, and O.Y. Goswick, a Stanford family friend from Mexia, Texas, whose business experience includes cattle-ranching and car sales. [App. 882, 899]. SIB's investment committee, which is purportedly responsible for the management of the bank's multi-billion dollar portfolio of assets, is comprised of Stanford, Stanford's father, Davis, Goswick and Laura Pendergest-Holt. [App. 524]. Pendergest-Holt, who became acquainted with Davis at their church in Baldwin, Mississippi, joined SFG in 1997, after graduating from Mississippi State University with a master's degree in mathematics. [App. 73]. Prior to joining SFG, Pendergest-Holt had no experience in the financial services or securities industries. [App. 73].[3] Based on these relationships, and the fact that Stanford is the sole shareholder of SIB and SGC, it appears that Stanford is subject to little or no independent oversight.

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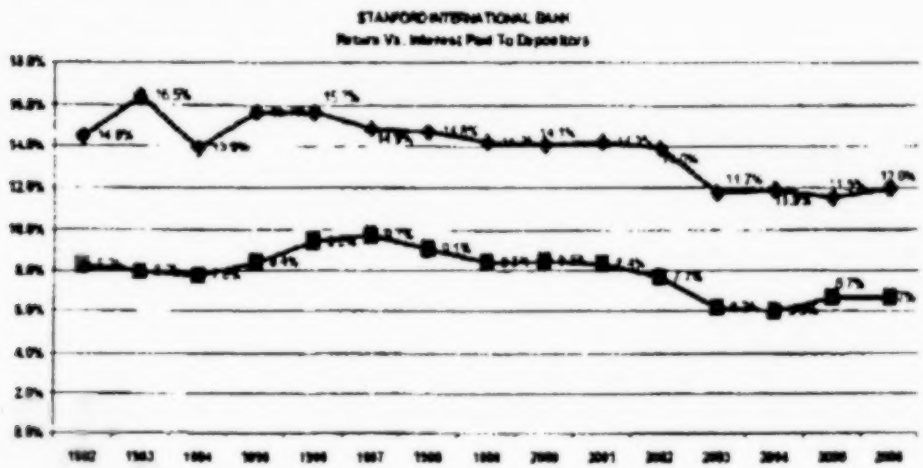
[3] Further, Ken Weeden holds the title of Managing Director-Research and Investments. He supervises a group of "analysts" that work in Memphis and Tupelo. Weeden reports to Pedergest-Holt, who is Weeden's sister-in-law. [App. 588]. Davis' son, and at least one of his college classmates, are research analysts whose responsibilities include, in part, oversight of a small portion of SIB's portfolio of assets.

B. Stanford International Bank

As of November 28, 2008, SIB reported $8.6 billion in total assets. [App. 541]. SIB's primary product is the CD. [App. 74, 403, 590, 668-70].[4] SIB aggregates customer deposits, and then purportedly re-invests those funds in a "globally diversified portfolio" of assets.

For almost fifteen years, SIB represented that it has experienced consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993):



[App. 345, 670, 1030].

Since 1994, SIB claims that it has never failed to hit targeted investment returns in excess of 10%. [App 407, 590]. And, SIB claims that its "diversified

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[4] SIB sold more than $1 billion in CDs per year between 2005 and 2007, including sales to U.S. investors. The bank's deposits increased from $3.8 billion in 2005, to $5 billion in 2006, and $6.7 billion in 2007. [App. 856]. SIB markets CDs to investors in the United States exclusively through SGC advisers pursuant to a Regulation D private placement. In connection with the private placement, SIB filed a Form D with the Commission. [App. 668, 906-12].

portfolio of investments" lost only $110 million or 1.3% in 2008. [App. 541]. During the same time period, the S&P 500 lost 39% and the Dow Jones STOXX Europe 500 Fund lost 41%. *Id.*

SIB's historical returns are improbable, if not impossible. After reviewing SIB's returns on investment over ten years, a performance reporting consultant hired by Stanford characterized SIB's performance as "not possible – almost statistically impossible." [App. 159-150]. Further, in 1995 and 1996, SIB reported identical returns of 15.71%, a remarkable achievement considering the bank's "diversified investment portfolio." [App. 345, 670] According to Pendergest-Holt, it is "improbable" that SIB could have managed a "globally diversified" portfolio of investments so that it returned identical results in consecutive years. [App. 106]. Likewise, the above-referenced performance reporting consultant believes that it is "impossible" to achieve identical results on a diversified investment portfolio in consecutive years. [App. 151]. Nonetheless, SIB continues to promote its CDs using these improbable/implausible returns. [App 345, 590, 670].

SIB's consistently high returns of investment have enabled the bank to pay a significantly higher rate on its CD than conventional banks. [App. 531, 533]. For example, SIB offered 7.45% as of June 1, 2005, and 7.878% as of March 20, 2006, for a fixed rate CD based on an investment of $100,000. [App. 668]. On November 28, 2008, SIB quoted 5.375% on a 3-year Flex CD, while comparable U.S. Banks' CDs paid under 3.2%. [App. 541].

SIB's extraordinary returns have also enabled the bank to pay disproportionately large commissions to SGC for the sale of SIB CDs. [App. 591, 669].[5] SGC receives a 3% fee from SIB on sales of CDs by SGC advisers. [App. 591]. Financial advisers receive a 1% commission upon the sale of the CDs, and are eligible to receive as much as a 1% trailing commission throughout the term of the CD. [App. 591, 669]. SGC promoted this generous commission structure in its effort to recruit established financial advisers to the firm. [App. 669]. The commission structure also provided a powerful incentive for SGC financial advisers to aggressively sell CDs to United States investors, and aggressively expanded its number of financial advisers in the United States. *Id.*

SIB purportedly managed the investment portfolio from Memphis and Tupelo. SIB's investment portfolio, at least internally, was segregated into three tiers: (a) cash and cash equivalents ("Tier 1"), (b) investments with "outside portfolio managers (25+)" that are monitored by the Analysts ("Tier 2"), and (c) unknown assets under the apparent control of Stanford and Davis ("Tier 3"). [App. 31, 586]. As of December 2008, Tier 1 represented approximately 9% ($800 million) of the bank's portfolio. [App. 586]. Tier 2, prior to the bank's decision to liquidate $250 million of investments in late 2008, represented approximately 10% of the portfolio. [App. 586]. And Tier 3

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[5] In 2007, SIB paid to SGC and affiliates more than $291 million in management fees and commissions from CD sales, up from $211 million in 2006. [App. 869-870].

represented 80% of the bank's investment portfolio. [App. 586].

C. SIB's Fraudulent Sale of CDs

1. SIB Misrepresented that Its Investment Portfolio is Invested Primarily in "Liquid" Financial Instruments.

In selling the CD, SIB touts the liquidity of its investment portfolio. [App. 85, 352]. For example, in its CD brochure, SIB emphasizes the importance of liquidity, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." [App. 528].[6]

In its 2007 annual report, which was signed and approved by Stanford and Davis [App. 881], SIB represented that its portfolio was allocated in the following manner: 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. [App. 871]. These allocations were depicted in a pie chart [App. 871], which was approved by Stanford and Davis. [App. 881].

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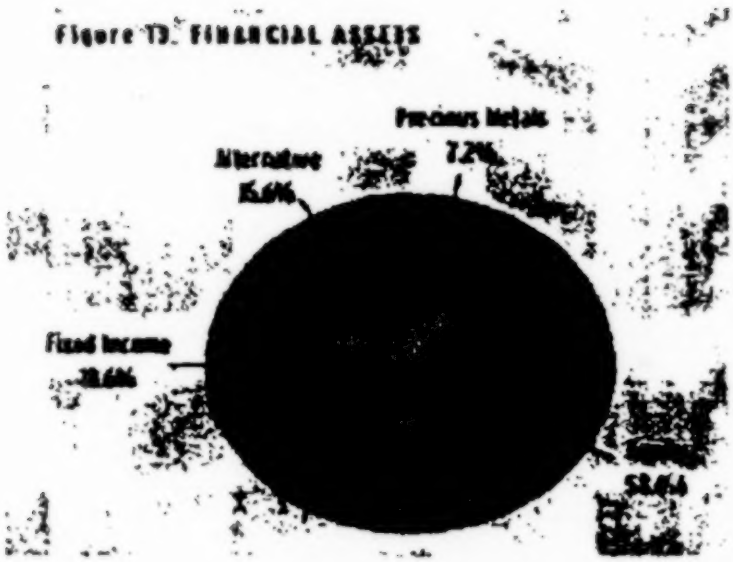
[6] Likewise, the bank trained SGC advisers that "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." [App. 1040].



[App. 871]

SIB's investment portfolio is not, however, invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Instead, a significant portion of the bank's portfolio is invested in illiquid investments – namely private equity and real estate. [App. 97, 588]. In fact, in 2008, the bank's portfolio included at least 23% private equity. [App. 1123-24]. The bank never disclosed in its financial statements its exposure to private equity and real estate investments.[7] [App. 504, 871].

Further, on December 15, 2008, Pendergest-Holt met with her team of analysts by teleconference following the bank's decision to liquidate more than 30% of its Tier 2 investments (approximately $250 million). [App. 587-88]. During the meeting, at

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[7] One of the bank's analysts candidly admitted that including private equity and real estate in the Equity allocation "does not make sense." [App. 589].

least one analyst expressed concern about the amount of liquidations in Tier 2, asking why it was necessary to liquidate Tier 2, rather than Tier 3 assets, to increase SIB's liquidity. *Id.* Pendergest-Holt told the analyst that Tier 3 was primarily invested in private equity and real estate and that Tier 2 was "more liquid" than Tier 3.[8] [App. 97, 587-88].

2. *SIB Misrepresented that Its Multi-Billion Dollar Investment Portfolio is Monitored By a Team of Analysts*

Prior to making their investment decision, prospective investors routinely asked how SIB safeguarded and monitored its assets. [App. 37]. In fact, investors frequently inquired whether Allen Stanford could "run off with the [investor's] money." *Id.* In response to this question, at least during 2006 and much of 2007, the SIO told investors that SIB had sufficient controls and safeguards in place to protect assets. *Id.* In particular, the SIO was trained by Pendergest-Holt to tell investors that the bank's multi-billion portfolio was "monitored" by the analyst team in Memphis. *Id.* In communicating with investors, the SIO followed Pendergest-Holt's instructions, misrepresenting that a team of 20-plus analysts monitored the bank's investment portfolio. *Id.* In so doing, the SIO never disclosed to investors that the team of analysts only monitor approximately 10% of SIB's money. *Id.* In fact,

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[8] Pendergest-Holt also stated that Tier 3 always included real estate. [App. 588]. Pendergest-Holt's statements contradict what she had previously stated to SIB's senior investment adviser. [App. 40, 45].

Pendergest-Holt trained the SIO "not to divulge too much" about oversight of the bank's portfolio because that information "wouldn't leave an investor with a lot of confidence." *Id.* Likewise, Davis instructed the SIO to "steer" potential CD investors away from information about SIB's portfolio. [App. 37, 43].

Contrary to the bank's representation that responsibility for SIB' s multi-billion portfolio was "spread out" among 20-plus people, even Pendergest-Holt and the SIO did not know the whereabouts of the vast majority of SIB's investment portfolio. [App. 356]. In fact, the only people that Pendergest and the SIO could identify as knowing the whereabouts of the bulk of SIB's portfolio were Stanford and Davis. [App. 31, 98, 588]. According to Pendergest-Holt, she and her team of analysts have never been privy to Tier 1 or Tier 3 investments. [App. 86, 586]. Similarly, the SIO did not have access to the bank's records relating to Tier 3, even though he was responsible, as the bank's Senior Investment Officer, for "closing" deals with large investors, "overseeing the bank's investment portfolio" and "ensuring that the investment side is compliant with the various banking regulatory authorities." [App. 32, 359]. In fact, in preparing the bank's periodic reports (quarterly newsletters, month reports, mid-year reports and annual reports), Pendergest and one of the analysts send to Davis the performance results for Tier 2 investments. [App. 64]. And Davis calculates the investment returns for the aggregated portfolio of assets. *Id.*

3. SIB Misrepresented that its Investment Portfolio is Overseen by a Regulatory Authority in Antigua that Conducts a Yearly Audit of the Fund's Financial Statements.

SIB told investors that their deposits were safe because the Antiguan regulator responsible for oversight of the bank's investment portfolio, the Financial Services Regulatory Commission (the "FSRC"), audited its financial statements. [App. 391] But, contrary to the bank's representations to investors, the FSRC does not audit or verify the assets SIB claims in its financial statements. [App. 675]. Instead, SIB's accountant, C.A.S. Hewlett & Co., a small local accounting firm in Antigua is responsible for auditing the multi-billion dollar SIB's investment portfolio.[9] [App. 675, 512, 881]

4. SIB Misrepresented that Its Investment Portfolio is Without "Direct or Indirect" Exposure to Fraud Perpetrated by Bernard Madoff.

In a December 18, 2008, letter to investors and a December 2008 Monthly Report, the bank told CD investors that their money was safe because SIB "had no direct or indirect exposure to any of [Bernard] Madoff s investments." But, contrary to this statement, *at least* $400,000 in Tier 2 was invested in Meridian, a New York-based hedge fund that used Tremont Partners as its asset manager. Tremont invested approximately 6-8% of the SIB

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[9] The Commission attempted several times to contact Hewlett by telephone. No one ever answered the phone.

assets they indirectly managed with Madoff s investment firm. [App. 1110]. Pendergest-Holt, Davis and Stanford knew about this Madoff exposure. Pendergest-Holt and an analyst were personally notified by Meridian of the Madoff exposure. [App. 1122-1124]. On December 15, 2008, the analyst confirmed the Madoff exposure through a weekly report (entitled "Laura Report") that was typically sent to Pendergest-Holt, Davis and Stanford. The report estimated "a loss of $400k . . . based on the indirect exposure" to Madoff. [App. 1125-1126].

5. Pershing Transparency

On or about December 12, 2008, Pershing, citing suspicions about the bank's investment returns and its inability to get from SIB "a reasonable level of transparency" into its investment portfolio, informed SGC that it would no longer process wire transfers from SGC to SIB for the purchase of the CD. [App. 675]. Since the spring of 2008, Pershing tried unsuccessfully to get an independent report regarding SIB's financials condition. *Id.* On November 28, 2008, SGC's President, Danny Bogar, informed Pershing that "obtaining the independent report was not a priority." *Id.* Between 2006 and December 12, 2008, Pershing sent to SIB 1,635 wire transfers, totaling approximately $517 million, from approximately 1,199 customer accounts. *Id.*

D. SGC and SCM Misrepresented SAS Performance Results.

From 2004 through 2009, SGC and SCM induced clients, including non-accredited, retail investors, to invest in excess of $1 billion in its SAS program by touting its track record of "historical performance."

[App. 679]. SCM highlighted the purported SAS track record in thousands of client presentation books ("pitch books"). [App. 679-681]. For example, the following chart from a 2006 pitch book presented clients with the false impression that SAS accounts, from 2000 through 2005, outperformed the S&P 500 by an average of approximately 13 percentage points [App. 757]:

Calendar Year Return As of July 2006						
	2005	2004	2003	2002	2001	2000
SAS Growth	12.09%	16.15%	32.84%	-3.33%	4.32%	18.04%
S&P 500	4.91%	10.88%	28.68%	-22.10%	-11.88%	-9.11%

SCM used these impressive, but fictitious, performance results to grow the SAS program to over $1 billion in 2008. [App. 679].[10]

The SAS performance results used in the pitch books from 2005 through 2009 were fictional and/or inflated. Specifically, SCM misrepresented that SAS performance results, for 1999 through 2004, reflected "historical performance" when, in fact, those results were fictional, or "back-tested", numbers that do not reflect results of actual trading.

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[10] SGC also used the SAS track record to recruit financial advisers away from legitimate advisory firms who had significant books of business. [App. 594; 681] After arriving at Stanford, the newly-hired financial advisors were encouraged and highly incentivized to put their clients' assets in the SIB CD. [App. 669-670].

[App. 9-12; App. 682-685]. Instead, SCM, with the benefit of hindsight, picked mutual funds that performed extremely well during years 1999 through 2004, and presented the performance of those top-performing funds to potential clients as if they were actual returns earned by the SAS program.[11] [App. 10-11]. Similarly, SCM used "actual" model SAS performance results for years 2005 through 2006 that were inflated by as much as 4%.[12] [App. 577-582; 681-684; 757].

SCM's management knew that the advertised SAS performance results were misleading and inflated. [*e.g.*, App. 10-13]. From the beginning, SGC/SCM management knew that the pre-2005 track record was purely hypothetical. [*Id.*]. And, as early as November 2006, SCM investment advisers began to question why their actual clients were not receiving the returns advertised in pitch books.

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[11] On occasion, the pitch books included disclaimers describing the back-tested performance as hypothetical. These disclaimers were wholly insufficient because they (i) appeared in only some of the pitch books, (ii) were buried in small text at the back of the document, and (iii) did not adequately dispel the misleading suggestion that the advertised performance represented actual trading. [App. 800-801]

[12] SCM told investors that SAS has positive returns for periods in which actual SAS clients lost substantial amounts. [App. 682-683]. For example, in 2000, actual SAS client returns ranged from negative 7.5% to positive 1.1%. In 2001, actual SAS client returns ranged from negative 10.7% to negative 2.1%. [*Id.*]. And, in 2002, actual SAS client returns ranged from negative 26.6% to negative 8.7%. [*Id.*] These return figures are all gross of SCM advisory fees ranging from 1% to 2.75%. [App. 842] Thus, Stanford's claims of substantial market out performance were blatantly false. (e.g., a claimed return of 18.04% in 2000, when actual SAS investors lost as much as 7.5%). [App. 682-683].

[App. 12-15; 597]. In response to these questions, SCM hired an outside performance reporting expert, to review certain of its SAS performance results. [App. 111]. In late 2006 and early 2007, the expert informed SCM that its performance results for the twelve months ended September 30, 2006 were inflated by as much as 3.4 percentage points. [App. 122-126]. Moreover, the expert informed SCM managers that the inflated performance results included unexplained "bad math" that consistently inflated the SAS performance results over actual client performance.[13] [App. 123, 152]. Finally, in March 2008, the expert informed SCM managers that the SAS performance results for 2005 were also inflated by as much as 3.25 percentage points.[14] [App. 140-145].

Despite their knowledge of the inflated SAS returns, SCM management continued using the pre-2005 track record and never asked the performance expert to audit the pre-2005 performance. [App. 131; 577-582; 681; 684]. In fact, in 2008 pitch books, SCM presented the back-tested pre-2005 performance data under the heading "Historical Performance" and "Manager

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[13] During sworn testimony, the expert characterized this "bad math" problem as "fishy," and could not provide any innocent explanation as to why the supposed mathematical errors worked consistently to the favor of the SAS models. [App. 123].

[14] Despite being informed in early 2007 that its 2006 performance results were materially inflated, SCM continued using inflated results for 2005 until in early 2008 it received irrefutable evidence of the inflated 2005 results. SCM did not inquire into the accuracy of the pre-2005 numbers until the SEC exam staff in early 2009 asked SCM management pointed questions about pre-2005 performance. [App. 131; 681; 684].

Performance" alongside the audited 2005 through 2008 figures. [App. 794]. SCM's outside consultant testified that it was "misleading" to present audited performance figures alongside back-tested figures. [App. 154].

Finally, SCM compounded the deceptive nature of the SAS track record by blending the back-tested performance with audited composite performance to create annualized 5 and 7 year performance figures that bore no relation to actual SAS client performance. [App. 682; 794]. A sample of this misleading disclosure used in 2008 and 2009 follows:

Calendar Year Return
As of March 2008

	YTD	2007	2006	2005	2004	2003	2002	2001	2000	1999
SAS Growth	-7.44%	12.40%	14.66%	8.82%	16.15%	32.84%	-3.33%	4.32%	18.04%	22.59%
S&P 500	-9.44%	5.49%	15.79%	4.91%	10.88%	28.68%	-22.10%	-11.88%	-9.11%	21.04%

Annualized Returns
(not annualized if less than 1 year)

	YTD	1 year	3 years	5 years	7 years	Since Inception
SAS Growth	-7.44%	0.80%	9.36%	15.31%	11.03%	12.30%
S&P 500	-9.44%	-5.08%	5.85%	11.32%	3.70%	2.45%

Other than the fees paid by SIB to SGC/SCM for the sale of the CD, SAS was the second most significant source of revenue for the firm. In 2007 and 2008, SGC/SCM received approximately

$25 million in fees from the marketing of SAS. [App. 680].

IV. LEGAL DISCUSSION AND ARGUMENT

Because the Commission is "not ... an ordinary litigant, but ... a statutory guardian charged with safeguarding the public interest in enforcing the securities laws," its burden to secure temporary or preliminary relief is less than that of a private party. *SEC v. Management Dynamics, Inc.*, 515 F.2d 801, 808 (2nd Cir. 1975). "[W]hen 'the public interest is involved in a proceeding of this nature, [the district court's] equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.'" *FSLIC v. Sahni*, 868 F.2d 1096, 1097 (9th Cir. 1989), *citing FTC v. H.N. Singer, Inc.*, 668 F.2d 1107, 1112 (9th Cir. 1982). For example, the Commission does not need to show irreparable injury or a balance of equities in its favor. *Id.*; *see also SEC v. Unifund SAL*, 910 F.2d 1028, 1035 (2nd Cir. 1990). Nor does the Commission need to demonstrate the lack of an adequate remedy at law, as private litigants must. *See SEC v. Cavanagh*, 155 F.3d 129, 132 (2nd Cir. 1998); *SEC v. Scott*, 565 F. Supp. 1513, 1536 (S.D.N.Y. 1983), aff'd *sub nom.*, *SEC v. Cayman Islands Reins. Corp.*, 734 F.2d 118 (2nd Cir. 1984).

Moreover, the ancillary remedy of a freeze order requires a lesser showing than that needed to obtain injunctive relief. *See SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("courts may order a freeze even where the SEC has failed to meet the standard necessary to enjoin future violations"). For example, to obtain an asset freeze, the Commission need not show a reasonable

likelihood of future violations. *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Instead, when there are concerns that defendants might dissipate assets, a freeze order requires only that the court find some basis for inferring a violation of the federal securities laws. *Unifund Sal*, 910 F.2d at 1041. Similarly, it is well-established that the Court has the authority to grant any form of ancillary relief where necessary and proper to effectuate the purposes of the federal securities laws. *SEC v. Materia*, 745 F.2d 197, 200 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985). Included in the court's equitable powers is the authority to appoint receivers. *See, e.g., SEC v. First Fin. Group*, 645 F.2d 429, 439 (5th Cir. 1981).

A. The Defendants Violated the Antifraud Provisions of the Securities Act and Exchange Act.

1. Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder.

Section 17(a) of the Securities Act prohibits the employment of a fraudulent scheme or the making of material misrepresentations and omissions in the offer or sale of a security. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit the same conduct, if committed in connection with the purchase or sale of securities.[15] A violation of these provisions occurs if the alleged misrepresentations or omitted facts were material. Information is material if there is a substantial likelihood that the omitted facts would have

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[15] Even if the investments offered do not exist, the antifraud provisions of the federal securities laws still apply. *SEC v. Lauer*, 52 F.3d 667, 670 (7th Cir. 1995).

assumed significance in the investment deliberations of a reasonable investor. *Basic, Inc. v. Levinson*, 485 U.S. 224 (1988).

Establishing violations of Section 17(a)(1) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder requires a showing of *scienter*. *Aaron v. SEC*, 446 U.S. 680 (1980). However, actions pursuant to Sections 17(a)(2) and (3) of the Securities Act do not require such a showing. *Id.* *Scienter* is the "mental state embracing intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). *Scienter* is established by a showing that the defendants acted intentionally or with severe recklessness. *See Broad v. Rockwell Int'l Corp.*, 642 F. 2d 929 (5th Cir.) *en banc, cert. denied* 454 U.S. 965 (1981). Stanford, Davis, Pendergest-Holt, and the Stanford corporate defendants violated these antifraud provisions.[16]

2. Defendants' Fraud Was in Connection with Offer or Sale of Security.

There is little doubt here that the defendants fraud was in connection with the offer, sale or purchase of securities.

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[16] To the extent the Court concludes that Stanford, Davis and Pendergest-Holt should not be held directly liable for violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, the evidence demonstrates that they are liable for aiding abetting violations of those provisions.

a. Defendants' Clients Sold Other Securities in Order to Purchase CDs.

First, even the "scratch the surface" level of evidence able to be compiled in advance of this emergency motion confirms that defendants fraudulent behavior, statements and omissions concerning SIB's CD program coincided with significant – and successful – efforts to lure investors to convert (*i.e.* sell) their existing securities holdings into investments in SIB's CDs. From August 2008 through December 2008 alone, approximately 50 SGC clients liquidated approximately $10.7 million in stocks, bonds, and other similar securities and invested that money in SIB's CDs. [App. 593]. This sampling, particularly when viewed in light of the heavy incentives SGC gave to its advisers to push SIB's CDs, strongly suggests that the fraudulent behavior outlined above coincided directly with the selling of, at least, millions of dollars in investments that are quintessential securities, such as stock. Accordingly, there can be no serious dispute that Defendants fraudulent conduct was in connection with the offer or sell of securities. *See SEC v. Zandford*, 535 U.S. 813, 825 (2002) (holding that the "in connection with" element is satisfied by "a fraudulent scheme in which the securities transactions and breaches of fiduciary duty coincide").

b. The CD is a security.

In addition to fraud in connection with the *selling* of securities, the defendants' fraud was also in connection with the purchase of securities, i.e., SIB's CDs. In fact, SIB itself admits that "[b]y making

this offering to Accredited Investors in the United States, SIBL and its officers are subject to certain laws of the United States, including the anti-fraud provisions of the U.S. federal securities laws and similar state laws." [App. 888]

The Supreme Court has emphasized that all notes – including products such as the "certificate of deposits" sold in this case – are presumed to be securities. *Reves*, 494 U.S. at 64. This presumption may be rebutted only by a showing that the note bears a strong resemblance to certain enumerated non-securities such as "the note delivered in consumer financing, the note secured by a mortgage on a home, the short term note secured by a lien on a small business or some of its assets, the note evidencing a "character" loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note which simply formalizes an open-account debt incurred in the ordinary course of business. *Reves*, 494 U.S. at 65. To determine whether such resemblance exists, the Supreme Court has applied a "family resemblance test," instructing that it is necessary to analyze the following four factors: (1) the motivation of the parties; (2) the plan of distribution; (3) the reasonable expectations of the investing public; and (4) the existence of factors which would reduce the risk of the instrument. *Id.* Notably, no one factor by itself is dispositive. *Id.*

A comparison of the instruments deemed to be securities in *Reves* to the current CDs demonstrates that there should "be little difficulty in concluding that the notes at issue here are 'securities:'" *Reves*, 494 U.S. at 67.

Factor	*Reves*	SIB
Motivation of Parties	"the Co-Op sold the notes in an effort to raise capital for its general business operations and purchasers bought them in order to earn a profit in the form of interest." *Reves*, 494 U.S. at 67-68.	SIB sold the notes in an effort to raise capital for its general business operations and purchasers buy them in order to earn a profit in the form of interest.
Plan of distribution	Notes were "offered and sold to a broad segment of the public, and that is all we have held necessary to establish the requisite 'common trading' in an instrument."	Notes were offered to a broad segment of the public.
Public's Reasonable Expectation	"Advertisements for the notes characterized them as 'investments' ... and there were no countervailing factors that would have led a reasonable person to question this characterization." *Reves*, 494 U.S. at 68-69.	SIB provides to its U.S. investors, among other things, a document titled "Disclosure Statement U.S. Accredited Investor Certificate of Deposit Program. This document prominently features a page labeled, "SECURITIES INVESTMENT STATEMENT," and refers to the purchase as "an investment decision."

Factor	*Reves*	SIB
Whether some factor such as the existence of another regulatory scheme "significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary."	"notes here would escape federal regulation entirely if the [Securities] Acts were held not to apply." *Reves*, 494 U.S. at 69.	Absent securities laws, no federal regulation over fraudulent statements and omissions made in sale of CDs appears to apply.

Importantly, the *Reves* Court held that if the seller's purpose is to finance substantial investments and the buyer is interested primarily in the profit the instrument is likely to generate, the instrument is likely to be a security. *Id.* at 66. That is precisely the situation here. Likewise, when the issuer solicits individuals, as compared to solicitations of sophisticated institutions, that indicates "common trading" and weighs in favor of finding the instrument a security. Again, that is the case here, where SIB, acting through its affiliated investment adviser and broker-dealer routinely solicits individuals via retail investments. [App. 593, 668]. Third, the public would reasonably view these instruments as securities investments, particularly where SIB itself describes them repeatedly as investments and advises clients that the offering of the CDs is subject to the antifraud provisions of the federal securities laws. Importantly, in *Stoiber v.*

SEC, 161 F.3d 745, 750 (D.C. Cir. 1998), the D.C. Circuit Court held that courts should consider instruments to be securities on the basis of public expectations, "even where an economic analysis of the circumstances of the particular transaction might suggest that the instruments are not securities as used in that transaction."[17]

The only factor that arguably weighs against the conclusion that the CDs are securities concerns the existence of some other risk-reducing system, given that SIB is subject to some regulatory oversight by the Financial Services Regulatory Commission of Antigua. To put it simply, this putative oversight is irrelevant.[18]

First, unlike some earlier lower court decisions, in *Reves*, the United States Supreme Court made it clear that its fourth factor considered the existence of alternate *federal* regulatory system, such as FDIC

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[17] In *Stoiber*, the D.C. Circuit Court noted that the Supreme Court in *Reves* described this factor as "a one-way ratchet" that "allows notes that would not be deemed securities under a balancing of the other three factors nonetheless to be treated as securities if the public has been led to believe they are. It does not, however, allow notes which under the other factors would be deemed securities to escape the reach of regulatory laws." 151 F.2d at 751.

[18] The Commission has noted elsewhere certain facets of the FSRC's regulatory role. The question is not whether the FSRC carries out those prescribed responsibilities, but whether that oversight – as designed – "virtually guarantees" the full recovery of deposits. In evaluating that question, it is worth noting how the administrator and chief executive of the FSCR was quoted late last week in the press, when he described his agency's new approach to overseeing SIB's activities: "it's not a Friday afternoon cocktail *anymore* ...." (emphasis added).

protection. 494 U.S. at 69. (citation omitted and emphasis added). For example, in evaluating this factor after *Reves*, the Tenth Circuit noted that regulation by a state is not enough. See *also Holloway v. Peat, Marwick, Mitchell & Co.*, 900 F.2d. 1485, 1488 (10th Cir. 1990), *cert. denied*, 498 U.S. 958 (1990) (holding that the Supreme Court in *Reves* clearly required an alternative *federal* regulatory system); *see also Bradford v. Moench*, 809 F. Supp. 1473, 1483 (D. Utah 1992) (following *Holloway* decision and holding Utah regulatory system cannot serve as risk reducing factor).[19]

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[19] The Commission recognizes that several circuits, including the Fifth Circuit, have concluded – prior to *Reves* and under significantly different circumstances – that certain certificates of deposit should not be considered "securities" under the Securities Act and Exchange Act. *See Wolf v. Banco Nacional de Mexico*, S.A., 739, F.2d 1458 (9th Cir. 1984), *cert. denied*, 469 U.S. 1108 (1985); *Callejo v. Bancomer, S.A.*, 764 F.2d 1101 (5th Cir. 1985); *Tafflin v. Levitt*, 865 F.2d 595 (4th Cir. 1989), *aff'd on other grounds*, 493 U.S. 455 (1990 (Pre-Reves)) (holding that certificates of deposit which were regulated by the banking system of Mexico or a state in the United States were not securities.). Due to the emergency nature of this request and because, regardless of how the Court applies Reves to SIB's CDs, it is clear that defendants fraudulent conduct was, as discussed above, in connection with the selling of securities, the Commission has not extensively addressed why those pre-Reves cases do not control here. Likewise, we have not addressed here the question of whether SIB's products could be considered "investment contracts" covered by the federal securities laws. Should the Court wish additional briefing on that issue, the Commission is prepared to provide it.

It should be noted, however, that the Commission – the primary agency responsible for determining whether the securities laws cover certain instruments – has applied the Securities Act to instruments the offering party claimed were similar to certificates of deposits, despite the existence of

As the Supreme Court made clear in *Marine Bank*, a certificate of deposit does not invariably fall outside the definition of a 'security' and "each transaction must be analyzed and evaluated on the basis of the content of the instruments in question, the purposes intended to be served, and the factual setting as a whole." *Marine Bank*, 455 U.S. 551 n.11 (1982). Here, the factual setting weighs strongly in favor of subjecting SIB's CDs to the federal securities laws. There simply is nothing here suggesting that the regulatory oversight provided by Antigua comes close to providing the "virtual guarantee" of repayment the holder of the particular CD at issue in *Marine Bank or Wolf* had, in contrast to an ordinary long-term debt holder who assumed the risk of the borrower's insolvency. Here, SIB's CDs have no FDIC protection, or any insurance protection from any Antiguan regulatory or government authority.[20]

Indeed, SIB itself admits in various offering documents that its customers assume the risk of SIB's insolvency, stating in substance that "the ability of SIB to repay principal and interest on the CD Deposits is dependent on our ability to successfully operate by continuing to make consistently profitable investment decisions" and "you may lose your entire investment." [App. 890]. This is precisely the sort of risks the antifraud

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certain oversight by a foreign regulator. *See In the Matter of State Bank of Pakistan*, Admin Proc. File No. 3-7727, 1992 SEC Lexis 1041 (May 6, 1992)

[20] This lack of refund guarantee is only exacerbated by SIB's attempts to lull investors with various claims of "insurance" that do not provide protection to the investor.

provisions and other protections of the federal securities laws were designed to address.

3. Defendants Misrepresentations and Omissions Were Material.

The misrepresentations to and information withheld from investors in this case concern, among other things, the disposition of offering proceeds, the security of investment principal, the returns associated with the investment, and the liquidity of the investment. These issues go to the core of an individual's investment decision. There is a substantial likelihood that these false representations and omissions would have assumed actual significance in the investment deliberations of a reasonable investor. They are therefore material. *See SEC v. Research Automation Corp.*, 585 F.2d 31, 35-36 (2d Cir. 1978) (misleading statements and omissions concerning the use of money raised from investors were material as matter of law); *see also United States v. Siegel*, 717 F.2d 9, 14-15 (2d Cir. 1983) (holding that failure to disclose the misappropriation of more than $100,000 was a fact which would be important to a stockholder in his decision making).

4. The Defendants Acted With Scienter

In making their material misstatements and omissions, the Defendants acted with *scienter*, which is a mental state embracing intent to deceive, manipulate, or defraud. *Ernst & Ernst v. Hochfelder, et al.*, 425 U.S. 185, 193 (1976).[21] Here,

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[21] A violation of Section 17(a)(1) of the Securities Act also requires a showing of scienter. However, the U.S. Supreme Court has held that scienter need not be shown in order to

the misrepresentations go to the core of the investment model marketed to investors. Selling investments marketed as highly liquid, but which were in fact heavily invested in illiquid private equity and real estate, while knowing that only two people actually knew the portfolio allocation and kept that information under lock and key is, at a minimum, severely reckless. Indeed, this action speaks of a high degree of *scienter*. Moreover, the actions of controlling individuals, and therefore their *scienter*, are attributable to the controlled company. *See SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1094 (2d Cir. 1971).

B. Stanford, SGC and SCM Violated, and Davis and Pendergest-Holt Aided and Abetted Violations of, the Antifraud Provisions of the Investment Advisers Act of 1940.

Through their deceitful and fraudulent conduct in selling the CDs and SAS, Defendants violated the antifraud provisions of the Investment Advisers Act. This is true, even if the Court, for the sake of argument, determines that the defendants' fraud was not in connection with the offer, sale or purchase of securities for purposes of Section 17(a) of the Securities Act or Section 10(b) of the Exchange Act.

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establish violations of Sections 17(a)(2) and (3) of the Securities Act. *Aaron v. SEC*, 446 U.S. 680, 696-97 (1980).

1. Section 206 Imposes a Fiduciary Duty on Defendants Prohibiting Defendants Fraudulent Conduct

Sections 206(1) and 206(2) of the Advisers Act (15 U.S.C. §§ 80b-6(1) & 80b-6(2)), prohibit an investment adviser from defrauding any client or prospective client by, directly or indirectly, employing any device, scheme, or artifice to defraud or engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client. While *scienter* is required to establish a violation of Section 206(1), negligence alone is sufficient to establish fraud liability under Section 206(2). *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195 (1963); *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). Unlike the antifraud provisions of the Securities Act and the Exchange Act, Sections 206(1) and 206(2) of the Advisers Act do not require that the activity be "in the offer or sale of any securities" or "in connection with the purchase or sale of any security." SEC v. Lauer, 2008 WL 4372896, *24 (S.D. Fla. September 24, 2008); Advisers Act Release No. 1092, 6 Fed. Sec. L. Rep. (CCH) ¶ 56,156E, at 44,057-7 to 44,058 (Oct. 8, 1987).

Instead, Section 206 establishes federal fiduciary standards to govern the conduct of investment advisers. *Transamerica Mortgage Advisers, Inc. v. Lewis*, 444 U.S. 11, 17 (1979). The fiduciary duties of investment advisers to their clients include the duty to act for the benefit of their clients, the duty to exercise the utmost good faith in dealing with clients, the duty to disclose all material facts, and the duty to employ reasonable care to avoid

misleading clients. *SEC v. Capital Gains Research Bureau, Inc. et al.*, 375 U.S. 180, 194 (1983). An adviser has "an affirmative obligation to employ reasonable care to avoid misleading [his or her] clients." *Id.* *Scienter* is required to establish a violation of Section 206(1) but is not a required element of Section 206(2). *SEC v. Steadman*, 967 F.2d 636, 643 fn.5 (D.C. Cir. 1992) (Section 206(2) violation only requires proof of negligence, not *scienter*).

2. Stanford, SGC and SCM are Investment Advisers Subject to Heightened Fiduciary Duties.

The definition of an investment adviser in Section 202(a)(11) of the Advisers Act, 15 U.S.C. § 80b-2(a)(11), includes "any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities." SGC/SCM do exactly that on a daily basis. Likewise, Stanford, as control person of both of those entities, satisfies the statutory definition of an investment adviser. *See In re Jay Deforest Moore, et al.*, Investment Advisers Act Rel. No 1548 (Jan. 19, 1996), 61 SEC Docket 544, 545 (charging individual with direct violations of Sections 206(1) and (2) of the Advisers Act because he "exercised exclusive control over" the firm and, therefore, was the firm's alter ego).

Likewise, Davis and Pendergest-Holt aided and abetted the Adviser Act violations. Aiding and abetting liability requires a showing of: (1) a primary violation; (2) knowledge or a general

awareness of the aider and abettor of having played a role in an overall activity that was improper; and (3) knowing and substantial assistance by the secondary violator of the conduct that constitutes the violation. *Woodward v. Metro Bank of Dallas*, 522 F.2d 84, 94-95 (5th Cir. 1975); *In the Matter of Glen Copeland*, (CCH) ¶83,903, at 87,732 (July 5, 1985); *Investors Research Corp. v. SEC*, 628 F.2d 168, 178 (D.C. Cir.), *cert. denied*, 449 U.S. 919 (1980). Recklessness satisfies the knowledge requirement, especially as to fiduciaries. *See In the Matter of Kemper Financial Services, Inc.*, Investment Company Act Rel. No. 21113 (June 6, 1995); *SEC v. Washington County Utility District*, 676 F.2d 218, 226 (6th Cir. 1982); *Rolf v. Blyth, Eastman Dillon & Co., Inc.*, 570 F.2d 38, 44-47 (2d Cir. 1978), *cert. denied*, 439 U.S. 1039.

Both Davis and Pendergest-Holt knew of the representations made to clients as to the securities that would be purchased to support their CD investment, and in fact, actually trained them to mislead investors. There is no doubt both Davis and Pendergest-Holt knowingly provided substantial assistance to the fraud violations of SBI, SCM and Stanford.

3. Each of the Defendants Acted with Scienter

As described in detail above, the defendants intentionally misled their clients. For example, knowing the importance to which investors would assign to the issue of exposure to the Madoff fund, the defendants voluntarily undertook to assure investors that SIB "had no direct or indirect exposure" to any Madoff investments.

Pendergest-Holt, Davis and Stanford knew when this statement was made that it was false. In the market environment of December 2008, it is hard to imagine a more material breach of an investment adviser's heightened duty of care owed to clients.

C. SIB and SGC Failure to Register as an Investment Company Violated Section 7(d) of the Investment Company Act of 1940.

Section 7(d) of the Investment Company Act of 1940 prohibits investment companies organized under the laws of foreign jurisdictions from making a public offering of securities in the United States, except by entry of an order from the Commission permitting registration. *See Investment Funds Institute of Canada* (1996 SEC No. Act. Lexis 334 (March 4, 1996). Both SIB and SGC (acting as SIB's underwriter) were bound by this requirement and failed to register, which was intended to, and had the effect of, shielding SIB's CD program from Commission oversight.

SIB qualifies as an "investment company" under either a "traditional" or an "inadvertent" investment company analysis. The "traditional" investment company is defined by ICA Section 3(a)(1)(A) as any issuer that holds itself out as primarily engaged, or proposes to be primarily engaged, in the business of investing, reinvesting or trading in securities. SIB's primary business is to manage the deposits of its customers, not any commercial banking activity.

Moreover, these customer deposits are invested primarily in securities.[22] [App. 867].

Likewise ICA Section 7(d), in addition to prohibiting SIB's offering, prohibits SGC's activities as an underwriter for SIB. SGC acted as an underwriter pursuant to ICA Section 2(40) because of its activities in connection with the sale of SIB's CDs.

V. APPROPRIATE RELIEF

A. Injunctive Relief

In analyzing the need for injunctive relief, courts focus on whether there is a reasonable likelihood that the defendant, if not enjoined, will engage in future illegal conduct. *See, e.g., SEC v. Comserv Corp.*, 908 F.2d 1407, 1412 (8th Cir. 1990); *SEC v. Bonastia*, 614 F.2d 908 (3d Cir. 1980); *SEC v. Commonwealth Chem. Sec., Inc.*, 574 F.2d 90, 100-101 (2d Cir. 1978). In determining the likelihood of future violations, the totality of the circumstances is to be considered. *Murphy*, 626 F.2d at 655. In granting or denying injunctive relief, courts have considered the following factors: (1) the egregious nature of the defendant's actions; (2) the isolated or recurrent nature of the violations; (3) the

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[22] Alternatively, SIB also qualifies as an "inadvertent" investment company pursuant to ICA Section 3(a)(1)(C)'s definition of "any issuer which is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposed to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis." In every year since 2004, equity investments have accounted for at least 48 percent of SIB's total assets.

degree of *scienter* involved; (4) the sincerity of the defendant's assurances, if any, against future violations; (5) the defendant's recognition of the wrongful nature of his conduct;[23] and (6) the likelihood that the defendant's occupation will present opportunities (or lack thereof) for future violations.[24] Additionally, other courts consider the defendant's age and health. *See SEC v. Youmans*, 729 F.2d 413 (6th Cir. 1984); *SEC v. Wash. County Util. Dist.*, 676 F.2d 218, 227 n.19 (6th Cir. 1982); *SEC v. Universal Major Indus. Corp.*, 546 F.2d 1044, 1048 (2d Cir. 1976), *cert. denied*, 434 U.S. 834 (1977).

Preliminary and permanent injunctive relief against Defendants are appropriate. Their violations were not merely technical in nature, but, rather, lie at the very heart of the remedial statutes.

Moreover, Section 20(a) of the Securities Act and Section 21(d)(1) of the Exchange Act authorize the Commission to seek emergency relief when it appears that a person is engaged or is about to engage in acts or practices in violation of the federal securities laws. 15 U.S.C. § 77t(a), 15 U.S.C. § 78u(d)(1). Defendants fraud is ongoing. A

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[23] This consideration is limited in other circuits by *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1219 (D.C. Cir. 1989), in which the Court of Appeals said that the "'lack of remorse' is relevant only where defendants have previously violated court orders, *see SEC v. Koenig*, 469 F.2d 198, 202 (2d Cir. 1972), or otherwise indicate that they do not feel bound by the law, *see SEC v. Savoy Indus.*, 587 F.2d 1149, 1168 (D.C. Cir. 1978)."

[24] *See SEC v. Carriba Air, Inc.*, 681 F.2d 1318, 1322 (11th Cir. 1982); *see also, SEC v. Bonastia*, 614 F.2d 908, 912 (3d Cir. 1980); *SEC v. Commonwealth Chemical Securities, Inc.*, 574 F.2d 90, 100-101 (2d Cir. 1978).

temporary restraining order is appropriate under the circumstances.

B. Ancillary Relief

1. Asset Freeze

An order freezing assets is appropriate to ensure that sufficient funds are available to satisfy any final judgment the Court might enter against the Defendants and to ensure a fair distribution to investors. *See, e.g., Manor Nursing Ctrs.*, 458 F.2d at 1106 (freeze of assets pending transfer to trustee); Unifund, SAL, 910 F.2d at 1041-42. An asset freeze as to each defendant's assets is appropriate to assure satisfaction of whatever equitable relief the court ultimately may order and to preserve investor funds. *Id.*; *CFTC v. Muller*, 570 F.2d 1296, 1300 (5th Cir. 1978). Additionally, an asset freeze "facilitate(s) enforcement of any disgorgement remedy that might be ordered" and may be granted "even in circumstances where the elements required to support a traditional SEC injunction have not been established." *See SEC v. Unifund Sal*, 910 F.2d 1028, 1041 (2d Cir.) *reh'g. denied*, 917 F.2d 98 (1990). It is well recognized that an asset freeze is sometimes necessary to ensure that a future disgorgement order will not be rendered meaningless. *See, e.g., United States. v. Cannistraro*, 694 F. Supp. 62, 71 (D.N.J. 1988), *modified*, 871 F.2d 1210 (3d Cir. 1989); *SEC v. Vaskevitch*, 657 F. Supp. 312, 315 (S.D.N.Y. 1987); *SEC v. R.J. Allen & Assocs., Inc.*, 386 F. Supp. 866, 881 (S.D. Fla. 1974).

The ancillary remedy of a freeze order requires a lesser showing than that needed to obtain injunctive relief. *See SEC v. Gonzalez de Castilla*, 145 F. Supp. 2d 402, 415 (S.D.N.Y. 2001) ("courts may order a

freeze even where the SEC has failed to meet the standard necessary to enjoin future violations"). For example, to obtain an asset freeze, the Commission need not show a reasonable likelihood of future violations. *CFTC v. Muller*, 570 F.2d at 1300. This lower standard results from the recognition that injunctive relief raises the possibility of future liability for contempt; an asset freeze only preserves the *status quo*. *Unifund Sal*, 910 F.2d at 1039. Accordingly, when there are concerns that defendants might dissipate assets, a freeze order requires only that the court find some basis for inferring a violation of the federal securities laws. *Unifund Sal*, 910 F.2d at 1041.

Here, there is a clear basis for fearing dissipation of funds. It appears that $250 million has been liquidated from Tier 2 since December 2008, and the Commission has learned of significant attempts to liquidate the portfolio within the last week. Moreover, not only is there "some basis for inferring a violation of the federal securities laws," for the reasons set out above, the Commission is more than likely to succeed on the merits of its case for antifraud violations.

2. Defendants Should Be Ordered to Preserve Relevant Evidence.

The Commission seeks an order prohibiting the movement, alteration, and destruction of books and records and an order expediting discovery. Such orders are appropriate to prevent the destruction of key documents and to ascertain what additional expedited relief may be necessary.

3. Expedited Discovery Is Appropriate.

The Federal Rules of Civil Procedure give District Courts discretion to permit expedited discovery. Defendants are usually given until at least 45 days after the service of a summons and complaint to respond to document requests, Fed. R. Civ. P. 34(b), and 30 days after such service to appear for a deposition, Fed. R. Civ. P. 30(a) or respond to interrogatories, Fed. R. Civ. P. 33(a). But each of these Rules provides that the Court, in its discretion, may shorten these periods. *See also Gibson v. Bagas Restaurants, Inc.*, 30 Fed. R. Serv. 2d 792, 87 F.R.D 60 (W.D. Mo. 1980) (accelerated discovery is allowable within the discretion of the Court). Moreover, where urgent relief is sought and expedited discovery is needed to accomplish that result, a court may grant accelerated discovery. *See Notaro v. Koch*, 35 Fed. R. Serv. 2d 580, 95 F.R.D. 403 (S.D.N.Y 1982). Expedited discovery is required in this case to enable the Commission more fully to develop the evidence prior to the conduct of a preliminary injunction hearing. The Commission should have the opportunity to supplement a complete evidentiary record prior to the preliminary injunction hearing. Also, expedited discovery is vital to determining the scope of the fraud and the whereabouts of investor funds. Accordingly, the Commission requests depositions on notice of 3 days, with notice provided as noted below.[25]

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[25] This is particularly important here because Defendants have not produced any documents during the investigation, and have failed to comply with lawfully issued subpoenas.

4. Alternative Service and Notice ProvisionsAccounting

Rule 4(f)(3) of the Federal Rules of Civil Procedure provides that the Court may authorize alternative means for service of process in foreign countries. The Commission respectfully requests that the Court authorize service upon the defendants by serving them, in the manner described in the Commission's proposed order, by providing notice and service of process on each Defendant by e-mail transmission and by facsimile.

5. Accounting

The Commission seeks an order requiring Defendants and Relief Defendants to make an immediate accounting. An accounting will enable the Commission to determine more accurately the scope of the fraud and disposition of investor funds. It will help ensure the proper distribution of the assets. *See SEC v. Int'l Swiss Invs. Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *Manor Nursing Ctrs.*, 458 F.2d at 1105-06. An accounting is particularly justified because of Tyler's use of investor funds and the Relief Defendants' receipt of property traceable to Tyler's illicit conduct and to investor funds.

6. Appointment of a Receiver

As noted above, the defendants in this case have made every effort to deny access to the records and data necessary to enforce the federal securities laws. In addition, many of the funds appear to be easily transferrable outside the United States. A receiver is necessary here to marshal, liquidate and distribute assets to the victims of the defendants' scheme and especially warranted in light of the Defendants' efforts to shield relevant financial data

and other key documents from independent review, the recent effort to remove operations from the United States, and recent large liquidations and lying to investors seeking to redeem their CDs.

7. An Order For Passport Surrender Are Appropriate.

An order for repatriation of funds and records sent offshore and still under the control of the defendants is appropriate. There is evidence that funds and records have been transferred overseas. In addition, based on the defendants' frequent foreign travel, the fact that Stanford maintains vast holdings (including residential real estate) in foreign locales, and Stanford's self-proclaimed dual residency, the Commission seeks an order requiring the defendants to surrender their passports to the court. These orders will ensure the efficacy of whatever equitable relief might ultimately be granted. *See R.J. Allen & Assocs., Inc.*, 386 F. Supp. at 881.

8. A Repatriation Order is Necessary.

The Commission also seeks a repatriation order requiring the Defendants to return to identified accounts in the United States, all trading proceeds that may be located outside this Court's jurisdiction. Such equitable relief is appropriate where the Commission is seeking disgorgement in its prayer for relief. *SEC v. R.J. Allen & Assoc., Inc.*, 386 F. Supp. 866, 880-881 (S.D. Fla. 1974).

Respectfully submitted,

/s/David B. Reece

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* * *

DECLARATION OF LINDA M. YODER[1]

I, Linda M. Yoder, do hereby declare under penalty of perjury, in accordance with 28 U.S.C. § 1746, that the following is true and correct, and further that this declaration is made on my personal knowledge and that I am competent to testify as to the matters stated herein:

1. I am a Certified Public Accountant, currently licensed to practice in the State of Texas. I have a Masters and Bachelor Degree in Accounting.

2. I have worked in the Office of Compliance, Inspections and Examinations of the United States Securities and Exchange Commission as a Staff Accountant conducting examinations of registered investment advisers and investment companies for over eight years.

3. From January 12 through February 6, 2009, I participated as the lead examiner on an examination of Stanford Group Company ("SGC") (File Nos. 801-50374 and 8-48611), a registered investment adviser and broker-dealer; Stanford Capital Management (File No. 801-67185), a registered investment adviser; and, Stanford Family Office, LLC (File No. 801-69096), a registered investment adviser (collectively known as "Registrants"), pursuant to Section 204 of the Investment Advisers Act of 1940

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[1] The Declaration of Linda M. Yoder was part of the Appendix filed in Support of the Application for Issuance of a Temporary Restraining Order in *SEC v. Stanford International Bank*, No. 3:09-cv-00298 (N.D. Tex. Feb. 17, 2009) (ECF Nos. 12-13). References to the District Court Appendix pages are indicated as "**[APP ####]**"

(the "Advisers Act") and Section 17(b) of the Securities Exchange Act of 1934 ("Exchange Act").

4. The Registrants were placed on FWRO's 2009 examination plan as full scope examinations and are rated "High Risk."

5. On February 5, 2009, I conducted an interview with Fred Palmliden, a Research Analyst for Stanford Financial Group ("SFG"). Palmliden does not work for Stanford International Bank ("SIB"). Palmliden is supervised by Laura Pendergest-Holt. Palmliden also stated that Pendergest-Holt reports to James Davis, Director and Chief Financial Officer of **[APP 0585]** Stanford Financial Group, and Chief Financial Officer of the SIB. Davis reports to Robert Allan Stanford the sole owner of the Stanford affiliated entities.

6. During this interview, Palmliden stated his duties include: (i) Western European equity market research, used for investment allocations of the Stanford Investment Model ("SIM"); (ii) monitoring investments in SIB's portfolio; and (iii) preparing reports for Pendergest-Holt and Davis related to SIB's portfolio.

7. Palmliden confirmed that SIB's portfolio consisted of three Tiers. Tier 1 held approximately $800 million, or 10%, of SIB's portfolio as of mid-December 2008 and consisted of primarily cash. Tier 2, was also approximately 10% of SIB's portfolio, consisting of 16 sub-portfolios managed by third party money managers and overseen by Pendergest-Holt and her team of analysts primarily from Memphis, TN. Tier 3 constitutes approximately 80% of SIB's portfolio, and Palmliden did not have access to information about Tier 3.

8. Palmliden stated that Patricia Maldonado, an employee of SFG managed Tier 1.

9. Palmliden indicated that, unlike Tier 3, he only had access to information related to Tier 2. Palmliden described Tier 2 investments as diversified, consisting of equities, fixed income, alternative funds, and traditional funds.

10. Palmliden explained that he compiled data for SIB's Tier 2 assets, monitoring different accounts, currency and product allocation. He stated that SFG's analysts monitored 16 third-party money managers.

11. Palmliden acknowledged that he compiled information in a master spreadsheet which showed a weekly performance summary for Tier 2. This master spreadsheet shows returns, different allocations, currency breakdown, product allocations, and sector allocations. The master spreadsheet is provided to Pendergest-Holt on a weekly basis. **[APP 0586]**

12. Palmliden stated that the Tier 2 portfolio investments and value were as follows:

	December 31, 2007	December 31, 2008
Total Value of Tier 2	< $900 million	$450 million
Cash	8%	1%
Fixed Income	12%	8.5%
Bond Funds		3.5%
Equities	30%	10.5%

Traditional Funds	14%	7%
Alternative Funds	43%	66%
Metals	1.2%	0.6%
Options/Forward/Futures	0.7%	2%

13. Palmliden stated that as of January 2009 Tier 2 was worth approximately $400 million.

14. Palmliden stated that is was not common for securities to be liquidated from Tier 2. He stated liquidations became more prevalent in Tier 2 in late 2008 and early 2009.

15. Palmliden stated that the bank made three rounds of withdrawals in late 2008, the first in the middle of November totaling $100 million, another two weeks later totaling $100 million, and another two weeks after that totaling $50 million. During January 2009, roughly $50 million had been withdrawn – in smaller amounts more on a day to day basis.

16. Palmliden indicated that in late 2008 the analysts became concerned with the rapid rate of liquidations of Tier 2 assets. Palmliden also noted that SIB had received penalties as a result of the liquidations.

17. Palmliden told me that, on December 15, 2008, the analysts from Memphis and Tupelo participated in a teleconference with Pendergest-Holt. According to Palmliden, the analysts questioned Pendergest-Holt about SIB's decision to liquidate $250 million, or approximately 30%, of its investments from Tier 2, when SIB's Tier 3

investments comprised approximately 80% of the bank's portfolio. **[APP 0587]**

18. According to Palmliden, Pendergest-Holt stated, in response to the analysts' questions, that Tier 3 consisted primarily of private equity and real estate and that the bank needed to maintain its cash ratio because the bank had experienced approximately $500 million in client redemptions.

19. Palmliden stated that it was his understanding that SIB's Board of Directors managed the Tier 3 assets, but the he could not identify any board members other than Davis and Stanford.

20. Pendergest-Holt also told Palmliden that: Tier 3 had (i) limited bond exposure and a small percentage of equities, (ii) moved toward private equity and real estate in recent years, and (iii) always included real estate investments.

21. Palmliden stated that he thought the SIB's entire portfolio was worth approximately $7.5 billion. But he did not have access to Tiers 1 or 3.

22. Palmliden stated that Ken Weedon, who reports to Pendergest-Holt, advised the analysts that on or about February 5, 2009 the oversight of Tier 2 would no longer be done in Memphis or Tupelo. Palmliden stated that the oversight of Tier 2 would be transferred to SIB in Antigua.

23. Palmliden stated that he was aware that SIB's investment portfolio had exposure to the fraud perpetrated by Bernard Madoff.

24. Palmliden stated that the Tier 2 portfolio annual returns were as follows:

- 2004 – 6.5%
- 2005 – 7.5%
- 2006 – 10 ½%
- 2007 – 9.9%
- 2008 – (32%)

[APP 0588]

25. The examination staff referred Palmliden to pie charts found in SIB's annual report which reflected asset allocations of SIB's investment portfolio. Palmliden told me that he had seen the pie charts and had questioned Pendergest-Holt regarding the allocations.

26. According to Palmliden, he expressed concerns to Pendergest-Holt about the allocations in SIB's annual report because it was unclear from the pie charts in the annual reports that the bank's portfolio included significant investments in private equities and real estate.

27. According to Palmliden, Pendergest-Holt explained that the private equity and real estate was reflected in the equity piece of the pie chart. Palmliden told me that "this did not make sense" and private equities and real estate should have been separately identified in the pie charts.

28. During the examination, Bernerd Young, Chief Compliance Officer of SGC, advised the examination staff that SFG and Sill were out of the SEC's jurisdiction and the examination staff would not have access to those entities.

29. Prior to producing any documents to the examination staff, Young reviewed the documents. The examination staff asked Young if he withheld any documents prior to the production. After an extended pause, Young replied, "I don't remember."

30. The examination staff requested a list of all documents withheld from the production. No list has been provided.

31. On January 15, 2009, the examination staff interviewed Young relating to the due diligence process performed by compliance on SIB's CD.

32. Young stated that as part of his due diligence process, he traveled to SIB in Antigua on an annual basis. According to the agenda provided by SGC, Young allegedly goes to SIB to attend presentations given by officers of the bank. **[APP 0589]**

33. Young stated that Lena Stinson, SGC's Global Compliance Officer, and Jane Bates, SGC's former Compliance Officer advised him that information about SIB's investment portfolio, regulatory correspondence or outside money managers was "off limits." For that reason he never asked for such information.

34. Young claimed that he had no access to SIB's investment portfolio. Young further claimed he did not know what bank-related activities were performed in Antigua or anywhere else. SIB continues to offer CDs using the above referenced yearly returns.

35. Young stated that he had no concerns relating to the consistent 11% yearly returns on SIB's portfolio. Young claimed it was impossible for

him to determine if the CD returns were achievable and reasonable based on the documents to which he had access.

36. On January 14, 2009 the examination staff interviewed Danny Bogar, President of SGC, relating to his knowledge of the CDs and SIB.

37. Bogar stated that he did not have access a list of the third party money managers because SIB refused to provide him with a list. Bogar further stated that he relied on SGC's compliance staff to do the due diligence on the SIB CD.

38. Bogar stated that the primary purpose of SIB is to sell CDs. SIB, through SGC, continues to sell CDs exclusively to U. S. clients.

39. SGC provided the examination staff with copies of two incentive programs used to reward the financial advisers for selling SIB CDs; Stanford International Bank Top Producers' Club ("TPC") and the most current program, Quarterly Net New Asset Growth ("QNNAG").

40. According to the documents provided the payout on TPC contained two components; an upfront bonus and trailing commissions. **[APP 0590]**

41. In 2007 SGC received 3% "referral fee" from SIB for the sale of its CDs. In 2008, the "referral fee" was lowered to 2.75%.

42. SGC's "corporate" retained 1.0% of the "referral fees" and the branch office retained 2.00%. From the 2.00%, 1.5% is added to the financial advisers "grid."

43. Once the "referral fee" is added to the grid the financial advisers were paid as follows: (i) for SIB CD sales less than $500,000, the financial adviser was paid 33% (0.50% annualized), (ii) for sales between $500,000 and $1 million, the financial adviser was paid 50% (.75% annualized), and (iii) for sales more than $1 million, 67% was paid to the financial adviser (1.00% annualized). The trailing commission was paid monthly which was 1/12 of the annualized amount.

44. SGC paid financial advisers an upfront bonus of 0.75% for new CD sales totaling more than $500,000. If a financial adviser produces $500,000 in sales for four consecutive quarters the payout increases to 1%. The financial adviser would receive an upfront bonus of 1% for the total of new CD sales totaling $2 million or more.

45. On January 23, 2009 the examination staff interviewed Jay Comeaux, the Executive Director of SGC's Houston Branch Office.

46. Comeaux claimed that the payout was higher for the CD than other products sold through SGC.

47. Comeaux stated that SGC did not have any controls in place to monitor the sales of SIB CDs.

48. The TPC program ceased on or about September 30, 2008. The QNNAG program was established effective October 1, 2008. **[APP 0591]**

49. Comeaux said that the current incentive program is calculated based on new business.

50. The examination staff was provided a copy of the FA Compensation (North America) under the QNNAG program. According to the chart the FA receives an annualized SIB payout of 50 basis points to 100 basis points, depending on the pre-established goal set by each regional office.

51. SGC provided the examination staff with various PowerPoint presentations used to train the financial advisers on the sale of CDs.

52. On January 10, 2009 the examination staff interviewed Chuck Weiser, Chief Financial Officer of SGC, relating to the financial condition of SGC.

53. Weiser stated that SGC had lost money for the past four years.

54. The November 2008 income statement provided by SGC reflected losses totaling $19.5 million. SGC's audited financial statements for 2007 and 2006 reflected losses totaling, $27.4 million and $20.5 million, respectively.

55. According to the FOCUS reports filed by SGC with FINRA, SGC has received capital contributions totaling $51 million in 2008, $41.750 million in 2007, and $51.5 million in 2006.

56. Weiser affirmed that these capital contributions were made by Robert Allan Stanford. But he did not know where Stanford got money.

57. According to the 2007 Statement of Cash Flows provided by SGC, SGC relied on the capital infusions to cover the losses incurred by the firm. **[APP 0592]**

58. During the examination, SGC provided a sample of 52 client files wherein SGC's clients liquidated securities to purchase CDs. The documents reflected that from August 2008 through December 2008, approximately $10.7 million in securities were liquidated to purchase SIB CDs. Approximately 15 of those clients were also investment advisory clients.

SIGNED this 14th day of February 2009 at Fort Worth, Texas.

/s/ Linda M. Yoder
Linda M. Yoder
Staff Accountant

[APP 0593]

APPENDIX G

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[ROLAND v. GREEN]
[full caption omitted]

* * *

DEFENDANT GRADY LAYFIELD, HANK MILLS AND JOHN SCHWAB'S NOTICE OF REMOVAL

Defendants Grady Layfield, Hank Mills and John Schwab ("Removing Defendants") hereby remove to this Court the state-court action described below pursuant to the Court's federal subject matter jurisdiction.

INTRODUCTION

On or about August 14, 2009, Plaintiffs commenced this action.

1. This action was filed in the 19th Judicial District Court for the Parish of East Baton Rouge, entitled *JAMES ROLAND, SUSAN ROLAND, MICHAEL J. GIAMBRONE, THOMAS E. BOWDEN, individually and on behalf of the THOMAS E BOWDEN SEP IRA, T.E. BOWDEN SR. RET. TRUST, G. KENDALL FORBES individually and on behalf of G. KENDALL FORBES IRA, DEBORAH S. FORBES individually and on behalf the DEBORAH S. FORBES IRA, WILLIAM BRUCE JOHNSON on behalf the BENTON BRUCE JOHNSON TRUST #1, WILLIAM BRUCE JOHNSON on behalf of the MARK CALVIN JOHNSON TRUST #1, WILLIAM BRUCE JOHNSON on behalf of the MARTHA J.C.*

JOHNSON GEN SKPG TR-SAS, WILLIAM BRUCE JOHNSON on behalf of the AIMEE LYNN JOHNSON #1-SAS, WILLIAM BRUCE JOHNSON on behalf the BENTON B. JOHNSON TEST II-SAS, TERENCE BEVEN, M.D. individually and on behalf of TERENCE BEVEN IRA, THOMAS J. MORAN, RALPH D. D'AMORE individually and on behalf of RALPH D. D'AMORE ON BEHALF OF FBO RALPH DANIEL D'AMORE MD A PROFESSIONAL CORP., RALPH D. D'AMORE IRA, DANIEL P. LANDRY individually and on behalf of DANIEL P. LANDRY IRA, RONALD MARSTON individually and on behalf of RONALD R. MARSTON IRA, RODNEY P STARKEY individually and on behalf of RODNEY P. STARKEY IRA, STEPHEN WILSON individually and on behalf of BONE AND JOINT CLINIC FBO STEPHEN WILSON, JEANNE ANNE MAYHALL, individually and on behalf of MICROCHIP ID SERVICES INC RETIREMENT PLAN, JOHN WADE individually and on behalf MICROCHIP ID SERVICES INC RETIREMENT PLAN, LYNN J. PHILIPPE versus JASON GREEN, GRADY LAYFIELD, HANK MILLS, CHARLES JANTZI, TIFFANY ANGELLE, JAMES FONTENOT, THOMAS NEWLAND, CHARLES JANTZI, GARY HAINDEL, TIMOTHY PARSONS, JOHN SCHWAB, JAY COMEAUX ALVARO TRULLENQUE, ZACK PARRISH, BERNARD YOUNG, LENA STINSON, JAY COMEAUX, RHONDA LEAR, JACK BRUNO, J.D. PERRY, JOE KLINGEN, RUSS NEWTON, DANNY BOGAR, JIM WELLER, JOHN DOES 1-10, STANFORD TRUST COMPANY, SEI INVESTMENTS COMPANY, AT LLOYD'S OF LONDON IN SYNDICATES 2987, 1866, 1084, 1274, 4000, & 1183, XYZ INSURANCE COMPANY, ABC

BOND COMPANY, and RST INSURANCE COMPANY, under cause number 581479 Sec. 27. ("Petition").

2. Among others, the Petition names as defendants Grady Layfield, Hank Mills and John Schwab. It also names several other individual defendants as well as Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183, alleged to be insurers that issued errors and omissions liability policies and directors and officers liability policies covering the Individual Defendants.

3. Removing Defendants have attached a copy of all process, pleadings, and orders filed in the state court. (*See* Exhibit A.) No defendants have been served. Thus, this Notice of Removal is timely and in compliance with 28 U.S.C. § 1446(b).[1]

4. Consent of other named defendants is not required because they have not yet been served with service of process. A defendant may remove without consent of a defendant who has not been served. *See Roe v. O'Donohue*, 38 F.3d 298, 301 (7th Cir. 1994).

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[1] Service of process is not an prerequisite to removal. Section 1446(b) expressly provides for removal of a civil action or proceeding within thirty days after the receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, or order or other paper from which it may first be ascertained that the case is one which is or has become removable. *See Delgado v. Shell Oil Co.*, 231 F.3d 165, 177 (5th Cir. 2000). *"We read § 1446(b) and its 'through service or otherwise' language as consciously reflecting a desire on the part of Congress to require that an action be commenced against a defendant before removal, but not that the defendant have been served." See id.*

Additionally, consent is not required of nominal defendants. *See id.* at 301.

5. Venue is proper in the U.S. District Court for the Middle District of Louisiana under 28 U.S.C. § 1446(a) because the case is being removed from Louisiana State Judicial District Court for the Parish of East Baton Rouge.

6. Removing Defendants removes the state court action pursuant to the Court's federal subject matter jurisdiction and would show the following in support:

BACKGROUND

7. On August 14, 2009 Plaintiffs filed their Petition in the 19th Judicial District Court for the Parish of East Baton Rouge. Plaintiffs' Petition alleges the Individual Defendants were Plaintiffs' investment advisors and that – as employees and investment advisors of and for the Stanford Group Company and Stanford Capital Management – they made negligent misrepresentations to Plaintiffs regarding a host of wrongdoing by Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management (the "Stanford Group Companies"). Plaintiffs claim, as well, that the Individual Defendants breached fiduciary duties and violated Louisiana's Securities Law.

8. Earlier this year, the Securities and Exchange Commission ("SEC") filed a Complaint against the Stanford Group Companies, R. Allen Stanford, James M. Davis, and Laura Pendergest-Holt in the U.S. District Court for the Northern District of Texas, styled *Securities and Exchange Commission v. Stanford International Bank, Ltd., Stanford Group Company Stanford Capital Management, R. Allen Stanford, James M. Davis, and Laura*

Pendergest-Holt, No. 3-09CV0298-L (the "SEC Complaint, attached as Exhibit B).

9. The SEC Complaint asserts that the defendants named therein engaged in "a massive, ongoing fraud" – specifically, that Stanford International Bank ("SIB"), acting "through a network of [Stanford Group Company] financial advisors, has sold approximately $8 billion of self-styled 'certificates of deposit' by promising high return rates that exceed those available through true certificates of deposits offered by traditional banks." (SEC Complaint ¶¶ 1-2, attached as Exhibit B). The Complaint states that "SIB and its advisers have misrepresented to CD purchasers that their deposits are safe because the bank: (i) re-invests client funds primarily in 'liquid' financial instruments...; (ii) monitors the portfolio through a team of 20-plus analysts; and (iii) is subject to yearly audits by Antiguan regulators." (*Id.* ¶ 8.) The SEC claims the defendants, as a result of these acts, committed a host of federal securities violations, including violations of § 10(b) of the Securities Exchange Act of 1934 and Rule 10-b5 promulgated thereunder, Section 17(a) of the Securities Act of 1933, Sections 206(1) and 206(2) of the Advisers Act, and Section 7(d) of the Investment Company Act. (*Id.* ¶ 13.)

10. The same day, the SEC – citing as authority Sections 20(b) and 20(d) of the Securities Act of 1933, Sections 21(d) and 21(e) of the Securities Exchange Act of 1934, Sections 41(d) and 41(e) of the Investment Company Act of 1940, and Sections 209(d) and 209(e) of the Investment Advisers Act of 1940 – applied for a temporary restraining order and orders freezing assets, requiring an accounting,

requiring preservation of documents, and authorizing expedited discovery, (Exhibit C, introductory paragraph and ¶ 11.)

11. The Dallas court granted the SEC's request and also issued an Order Appointing Receiver (the "Order"). In that Order, the court assumed "exclusive jurisdiction" over the matter and took "possession of the assets ... of whatever kind and description, wherever located...of the Defendants[.]" (Order, attached as Exhibit D, ¶ 1.)

12. The Order is far-reaching and gives the receiver broad powers. For example, the Order authorized the receiver to "immediately take and have complete and exclusive control ... of the Receivership Estate [defined as all assets the defendants owned or controlled and all documents the defendants possessed or that were in the possession of any agent or employee of the defendants] and to any assets traceable to assets owned by the Receivership Estate." (*Id.* ¶ 4,) Further, the Dallas court ordered that the "officers, agents and employees" of the Stanford Group Companies preserve and retain all of their documents. (*Id.* ¶ 13.).

13. The Order also enjoins civil actions such as Plaintiffs':

> Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction:

> (a) ***The commencement or continuation***, including the issuance or employment of process, ***of any judicial, administrative, or other proceedings against*** the Receiver, any of the defendants, the Receivership Estate, or ***any*** agent, officer, or ***employee related to the Receivership Estate, arising from the subject matter of this civil action***. [*Id.* ¶ 7(a), emphasis added.]

Similarly, the Order enjoins creditors "and all other persons" from taking either "[a]ny act to obtain possession of the Receivership Estate assets" or "[a]ny act to collect, assess, or recover a claim ... that would attach to or encumber the Receivership Estate," without prior court approval. (*Id.* ¶ 8(c).) Plaintiffs likely knew of the Dallas court's injunction and Order. Moreover, many of Plaintiffs' allegations mirror the allegations the SEC first asserted against the Stanford Group Companies in the Dallas action.[2]

16. Plaintiffs do not allege they received prior approval from the Dallas court to proceed with this action.

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[2] The district court entered an Amended Order Appointing Receiver on March 12, 2009. The Amended Order is identical to the original Order as to the matters cited herein.

FEDERAL QUESTION JURISDICTION EXISTS IN THIS CASE

17. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 28 U.S.C. § 1441 because this case presents a substantial federal question – namely, the suit challenges whether the Dallas court has **authority** to enjoin this action under the federal securities law, federal common law, or, simply, under the court's "ancillary equitable jurisdiction" such that Plaintiffs' action may not proceed. (Order ¶ 7(a), attached as Ex. D).

18. Plaintiff's' suit in its prayer for civil money damages is also "related to the Receivership Estate [and] arises] from the subject matter of the Dallas action. (*Id.*) As such, this action is precisely the type of suit the Dallas court has attempted to enjoin through its Order. Plaintiffs' attempt to prosecute this action thus constitutes a ***direct challenge*** to the Order given the Dallas court's injunction of suits against "employees" of the Stanford Group Companies.

19. In addressing this suit, therefore, a court necessarily must determine whether the action may proceed or whether the Dallas court's Order prevents the suit from going forward. In making this determination, a court must consider the Dallas court's authority to enjoin this action, which is undoubtedly a federal question: Specifically, the Court must determine the scope of the Dallas court's authority to enjoin civil actions under Sections 20(b) and 20(d) of the Securities Act of 1933, Sections 21(d) and 21(e) of the Securities Exchange Act of 1934, Sections 41(d) and 41(e) of the Investment

Company Act of 1940, and Sections 209(d) and 209(e) of the Investment Advisers Act of 1940, federal common law, and the court's "inherent equitable jurisdiction." The issue bears directly on federal law – the federal securities laws (to which a federal court has ***exclusive*** jurisdiction insofar as an action under the 1934 Securities Exchange Act is presented), federal common law, and a federal court's equitable jurisdiction.

20. Case law reveals instances where a federal injunction or stay purports to preclude state-court actions. Courts in these situations analyze federal law to decide whether a competing state-court action may proceed in the face of a federal injunction. Here, this Court must analyze the breadth of federal securities law, federal common law, and/or a federal court's equitable jurisdiction – or, possibly, all of them – to decide whether this action may proceed. The core of this case – indeed, whether this action may exist at all – presents a substantial federal question and, therefore, falls under the Court's federal subject matter jurisdiction. *See Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995) (explaining that, if "the state court necessarily must look to federal law in passing on the claim, the case is removable regardless of what is in the pleading"); *US Express Lines Ltd. v. Higgins*, 281 F.3d 383, 389 (3d Cir. 2002) ("The state suit need not invoke a federal law in order to 'arise under' it for removal purposes. It is sufficient that the merits of the litigation turn on a substantial federal issue that is 'an element, and an essential one, of the plaintiff's cause of action.'"); *T.B. Harms Co. v. Eliscu*, 339 F.2d 823, 827 (2d Cir. 1964) ("Even though the claim is created by state law, a case may

'arise under' a law of the United States if the complaint discloses a need for determining the meaning or application of such a law."), *cert. denied*, 381 U.S. 915.

WHEREFORE, Grady Layfied, Hank Mills and John Schwab respectfully request that this Court assume full jurisdiction over the cause herein as provided by law.

Respectfully submitted,

/s/
Donna Garbarino Schwab
Bar Roll # 5917
Attorney at Law
2446 June Street
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Telephone :(225)936-6452
Fax :(225) 387-1714
Attorney, for Grady Layfield, Hank Mills and John Schwab

* * *

EXHIBIT A

[ROLAND v. GREEN]
[full caption omitted]

PLAINTIFF'S ORIGINAL PETITION

NOW INTO COURT, through undersigned counsel comes Plaintiffs, **JAMES ROLAND, SUSAN ROLAND, MICHAEL J. GIAMBRONE, THOMAS E. BOWDEN , individually and on behalf of the THOMAS E. BOWDEN SEP IRA, T.E. BOWDEN SR. RET. TRUST, G. KENDALL FORBES individually and on behalf of G. KENDALL FORBES IRA, IRA, DEBORAH S. FORBES individually and on behalf of the DEBORAH S. FORBES IRA, WILLIAM BRUCE JOHNSON on behalf of the BENTON BRUCE JOHNSON TRUST #1, WILLIAM BRUCE JOHNSON on behalf of the MARK CALVIN JOHNSON TRUST #1, WILLIAM BRUCE JOHNSON on behalf of the MARTHA J. C. JOHNSON GEN SKPG TR-SAS, WILLIAM BRUCE JOHNSON on behalf of the AIMEE LYNN JOHNSON TRUST #1-SAS, WILLIAM BRUCE JOHNSON on behalf of the BENTON B. JOHNSON TEST II-SAS, TERENCE BEVEN individually and on behalf of TERENCE BEVEN IRA, THOMAS J. MORAN, RALPH D. D'AMORE individually and on behalf of RALPH D. D'AMORE ON BEHALF OF FBO RALPH DANIEL D'AMORE MD A PROFESSIONAL CORP, RALPH D. D'AMORE IRA, DANIEL P. LANDRY individually and on**

behalf of DANIEL P. LANDRY IRA, RONALD R. MARSTON individually and on behalf of RONALD R. MARSTON IRA, RODNEY P. STARKEY individually and on behalf of RODNEY P. STARKEY IRA, STEPHEN WILSON individually and on behalf of BONE AND JOINT CLINIC FBO STEPHEN WILSON, JEANNE ANNE MAYHALL individually and on behalf of MICROCHIP ID SERVICES INC RETIREMENT PLAN, JOHN WADE individually and on behalf of MICROCHIP ID SERVICES INC RETIREMENT PLAN (collectively referred to herein as "Plaintiffs") who for their petition against Investment Advisor Defendants named below (collectively referred to herein as "Investment Advisor Defendants"), the Trust Defendants named below (collectively referred to herein as "Trust Defendants"), SEI INVESTMENTS COMPANY ("SEI"), and the Insurers named below (collectively referred to herein as "Insurers") (Trust Defendants, Investment Advisor Defendants, SEI and Insurers are collectively referred to as "Defendants") respectfully represent as follows:

PARTIES

1.

Plaintiffs in this case are as follows:

A. **WILLIAM BRUCE JOHNSON**, on behalf **BENTON BRUCE JOHNSON TRUST #1, MARK CALVIN JOHNSON TRUST #1, MARTHA J. C. JOHNSON GEN SKPG TR-SAS, AIMEE LYNN JOHNSON TRUST #1-SAS, BENTON B. JOHNSON TEST II-SAS** a person of the full age of

majority residing at 234 WEST GREENS DRIVE, BATON ROUGE, LA 70812-8933 ("Johnson");

B. **JAMES ROLAND**, a person of the full age of majority residing at 4966 ROSEMOUND LOOP, ST. FRANCISVILLE, LA 70775 ("J. Roland");

C. **SUSAN ROLAND**, a person of the full age of majority residing at 4966 ROSEMOUND LOOP, ST. FRANCISVILLE, LA 70775 ("S. Roland");

D. **DEBORAH S. FORBES individually and on behalf of the DEBORAH S, FORBES IRA** a person of the full age of majority residing at 222 GRANVILLE COURT, BATON ROUGE, LA 70810 ("Forbes");

E. **MICHAEL GIAMBRONE**, a person of the full age of majority residing at 4724 HIGHWAY 308, NAPOLEONVILLE, LA 70390 ("Giambrone");

F. **THOMAS J. MORAN**, a person of the full age of majority residing at 2354, Baton Rouge, Louisiana 70808 ("Moran");

G. **THOMAS E. BOWDEN , individually and on behalf of the THOMAS E. BOWDEN SEP IRA, T.E. BOWDEN SR. RET. TRUST**, a person of the full age of majority residing at 102 SEDGEFIELD CIRLCE LAFAYETTE, LA 70503 ("Bowden");

H. **TERENCE BEVEN, M.D. individually and on behalf of TERENCE BEVEN IRA** a person of the full age of majority residing at 17538 Amelia Drive, Baton Rouge, Louisiana 70810 ("Beven");

I. **G. KENDALL FORBES** individually and on behalf of **G. KENDALL FORBES IRA** a person of

the full age of majority residing at 222 GRANVILLE COURT, BATON ROUGE, LA 70810 ("Forbes");

J. **RALPH D. D'AMORE individually and on behalf of RALPH D. D'AMORE ON BEHALF OF FBO RALPH DANIEL D'AMORE MD A PROFESSIONAL CORP., RALPH D. D'AMORE IRA** a person of the full age of majority with an address of 114 Pinecrest Drive, Greenwood, SC ("Damore");

K. **DANIEL P. LANDRY individually and on behalf of DANIEL P. LANDRY IRA** a person of the full age of majority residing at 135 Bayou Side Street, Napoleonville, LA 70390 ("Landry");

L. **RONALD R. MARSTON individually and on behalf of RONALD R. MARSTON IRA** a person of the full age of majority residing at 18664 Amen Corner Court, Baton Rouge, LA 70810 ("Marston");

M. **RODNEY P. STARKEY individually and on behalf of RODNEY P. STARKEY IRA** a person of the full age of majority residing at 18016 Highland Drive, Independence, LA 70443 ("Starkey");

N. **STEPHEN WILSON individually and on behalf of BONE AND JOINT CLINIC FBO STEPHEN WILSON** a person of the full age of majority with an address of 701 Hennessey Boulevard, Ste. 200, Baton Rouge, LA 70808 ("Wilson");

O. **JEANNE ANNE MAYHALL individually and on behalf of MICROCHIP ID SERVICES INC RETIREMENT PLAN** a person of the full age of majority with an address of 78294 Oak Ridge Road, Folsom, LA 70437 ("Mayhall");

P. **JOHN WADE individually and on behalf of MICROCHIP 1D SERVICES INC RETIREMENT PLAN** a person of the full age of majority with an address of 78294 Oak Ridge Road, Folsom, LA 70437 ("Wade"); and

Q. **LYNN J. PHILPPE, individually and on behalf of Lynn J. Philippe IRA**, is a person of the full age of majority residing at 17538 Amelia Drive, Baton Rouge, Louisiana 70810 ("Phillipe").

The persons listed in items are collectively referred to as the "Plaintiffs." The Trust Plaintiffs are the Plaintiffs listed at items G. to Q. The Trust Plaintiffs are only filing actions based upon Counts Seven to Thirteen. Plaintiffs J Roland, S Roland, Giambrone and Moran are only pursuing claims based on Counts One to Six and Count Twelve

2.

The Investment Advisor Defendants are all persons who sold Plaintiffs the SIB certificates of deposits along with Jason Green, and Jay Comeaux, who were officers of Stanford Financial Group Made Investment Advisor Defendants herein are the following parties:

A. **JASON GREEN**, a person of the full age of majority residing at 19231 S Lakeway Avenue, Baton Rouge, Louisiana 70810 ("Green");

B. **GRADY LAYFIELD**, a person of the full age of majority residing at 18772 Amen Corner Ct., Baton Rouge, Louisiana 70810 ("Layfield");

C. **HANK MILLS**, a person of the full age of majority residing at 2623 Kleinert Avenue, Baton Rouge Louisiana 70806 ("Mills");

D. **CHARLES JANTZI**, a person of the full age of majority residing at 723 Troutbeck, Baton Rouge, Louisiana 70810 ("Jantzi");

E. **TIFFANY ANGELLE**, a person of the full age of majority residing at 403 Boulder Creek Parkway, Lafayette, Louisiana 70508 ("Angelle");

F. **JAMES FONTENOT**, a person of the full age of majority residing at 9902 Hillon Hood Road, Denham Springs, Louisiana 70726 ("Fontenot");

G. **DIRK HARRIS**, a person of the full age of majority residing at 10151 Hillmont Avenue, Baton Rouge, Louisiana 70810 ("Harris");

H. **THOMAS NEWLAND**, a person of the full age of majority residing at 102 Hidden Wood Drive, Lafayette, Louisiana 70508 ("Newland"); and

I. **JAY COMEAUX**, a person of the full age of majority residing at 2211 Augusta #18, Houston, Texas 77057 ("Comeaux")

3.

The Trust Defendants are Stanford Trust Company and all Officers and Directors of the Stanford Trust Company. Made Trust Defendants are as follows:

A. **STANFORD TRUST COMPANY**, a trust company organized and existing under the laws of the state of Louisiana, which can be served through its registered agent for service of process, Zack S. Parrish, 445 North Blvd, 8th Floor, 70802-5709;

B. **ZACK PARRISH**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 1434 Chimney Rock Rd., Houston, Texas 77056;

C. **BERNARD YOUNG**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

D. **LENA STINSON**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 3118 Heathglen Road, Montgomery, Texas 77356;

E. **JAY COMEAUX**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 2211 Augusta #18, Houston, Texas 77057;

F. **RHONDA LEAR**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 3030 Dunvale Road, Houston, Texas 77063;

G. **JACK BRUNO**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

H. **J.D. PERRY**, a person of full age of majority, who may be served at 10139 Glen Arbor Ave., Baton Rouge, Louisiana 70809;

I. **JOE KLINGEN**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 12607 Rocky Meadow Drive, Houston, Texas 77024;

J. **RUSS NEWTON**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

K. **DANNY BOGAR**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

L. **JIM WELLER**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time; and

M. **JOHN DOES 1-10**, which are all other officers and directors of the Stanford Trust Company during the time period in which the Trust purchased SIB CD's on behalf of the Plaintiffs.

4.

Further made defendant herein is **SEI INVESTMENTS COMPANY**, a foreign corporation registered to do and actually doing business in the state of Louisiana, which may be served through via the Louisiana Long Arm Statute at its registered office at 1 Freedom Valley Road, Oaks, Pennsylvania 19456 ("SEI").

5.

The Insurers provided insurance coverage for the damages resulting from the acts, inactions, omissions and errors of the IRA Defendants and Investment Advisor Defendants. The Insurers made defendant herein are the following parties:

A. **CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON IN SYNDICATES 2987, 1866, 1084, 1274, 4000 & 1183**. These Defendants are citizens of the United Kingdom and provide policies of errors and omissions liability insurance and directors and officers liability insurance to the Investment Advisor Defendants and IRA Defendants. Per the service of suit clause in the policies of insurance, this Defendant may be served with the petition and citation by serving Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829

B. **ABC BOND COMPANY**, the bond company which provides fidelity bonds to cover the actions of the Investment Advisor Defendants and IRA Defendants; and

C. **RST INSURANCE COMPANIES**, the insurance companies which provides policies of comprehensive general liability insurance to each Investment Advisor Defendant and IRA Defendant.

SUMMARY OF ALLEGATIONS

6.

Plaintiffs have suffered substantial financial injury as a result of Defendants' conduct, as alleged herein. Whereas a substantial number of all of the Plaintiffs are older adults who are no longer gainfully employed, their prospects of replacing the retirement monies lost are virtually nonexistent--leaving Plaintiffs with substantially reduced means for their continued sustenance. Thus, as a consequential and proximate result of their financial injuries, Plaintiffs have experienced, and continue to experience, severe emotional distress in the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, according to proof at trial. Plaintiffs' emotional distress has caused and is continuing to cause them to suffer additional financial losses as well, according to proof at trial

7.

All Investment Advisor Defendants reported to and were supervised by Jason Green, who was located in Baton Rouge, Louisiana, and Jay Comeaux, who was located in Houston, Texas. Investment Advisor Defendants received above market commissions on the sale of the SIB CD's to

Plaintiffs and Trust Plaintiffs. Green and Comeaux received part of the commission for the sales of all Investment Advisors reporting to each of them. Because of the marketing plan and commission structure, Investment Advisor Defendants failed to inquire about material facts and risks of the SIB CD's that the Investment Advisor Defendants should have known and understood as investment advisors representing Plaintiffs and failed to inform Plaintiffs of these material facts and risks. Investment Advisor Defendants called the debt instruments sold to Plaintiffs "certificates of deposit" and referred to the issuing entity as a "bank." In truth and in fact, the "bank" was a speculative highly leveraged hedge fund and the so called "certificates of deposit" were nothing more than a high-risk ultra-speculative mezzanine type debt junk bond. Investment Advisor Defendants failed to follow generally accepted standards of due diligence for investment advisors in evaluating the Plaintiffs' risks in the purchase of the SIB CD's and failed to make reasonable inquiry of the Plaintiffs' risks in an investment in an affiliate of Investment Advisor Defendants' employer. Trust Defendants, as custodian of the IRA accounts failed to implement internal controls to monitor the activities of the Investment Advisor Defendants and failed to implement the proper internal controls to value the SIB CD's in the Trust over the life of the investments. Had the accounts been properly valued based upon the underlying assets of SIB, the fraud of Allen Stanford would have been apparent and the Plaintiffs would not have rolled their IRA into the Stanford Trust Company.

8.

In addition to the generally accepted standards of due diligence, the Trust served as the trustee of the Trust Plaintiff's Individual Retirement Accounts (the "IRA's") and other trust accounts (collectively the "Trust Accounts"). The Trust Defendants allowed Investment Advisor Defendants to market the sale of the SIB CD's. Further, the Trust Defendants allowed the Trust to invest the SIB CD's with little or no regard or understanding of the risk profile or where the funds were being invested or whether the required information was being disclosed to the Plaintiffs. The Trust Defendants allowed these SIB CD's to be sold to the Trust despite the fact that the Office of Financial Institutions ("OFI") had examined the Trust and ordered that the sales be restricted and later removed from the Trust. The failure to disclose the risk perceived by OFI to each investor who purchased CD's or renewed CD's during this time period resulted in loss to Trust Defendants.

9.

Because of this lack of inquiry by Investment Advisor Defendants and Trust Defendants, Plaintiffs misunderstood or simply did not know the risks inherent in an investment in the SIB CD's. In truth and in fact, SIB was a "ponzi scheme" which used cash flow realized from the proceeds of the sale of other SIB CD's to new investors to pay the interest income on the older SIB CD's rather than the actual cash income generated from the investments of SIB. Had Investment Advisor Defendants or Trust Defendants performed the proper due diligence before recommending this investment to Plaintiffs, Investment Advisor Defendants would have been

able to correctly evaluate the risks and inform Plaintiffs of the risks, and Plaintiff would not have purchased the SIB CD's

DEFINITIONS AND NAMES

10.

The following names and abbreviations are used in this petition:

A. "Stanford International Bank, Ltd" or "SIB" is a private international bank domiciled in St John's Antigua, West Indies. SIB sold the SIB CD'S to US investors through SGC, its affiliated investment adviser. Each of the Investment Advisor Defendants was affiliated with SGC.

B. "Stanford Group Company" or "SGC" is a Houston-based corporation, which is registered with the Commission as a broker-dealer and investment adviser. It has 29 offices located throughout the US, including Baton Rouge. SGC's principal business consists of sales of SIB-issued securities, marketed as certificates of deposit. SGC is a wholly owned subsidiary of Stanford Group Holdings, Inc., which in turn is owned by R. Allen Stanford ("Stanford"). Investment Advisor Defendants are employees of and affiliated with SGC.

C. "Stanford Capital Management" or "SCM" is a registered investment adviser, which took over the management of the SAS program (formerly Mutual Fund Partners) from SGC in early 2007. Stanford Group Company markets the SAS program through SCM.

D. "SIB CD's" means the debt instruments sold by Investment Advisor Defendants and issued by Stanford International Bank, Ltd. to Plaintiffs.

E. "Trust" means the Stanford Trust Company.

MATERIAL REPRESENTATIONS MADE BY REPRESENTATIVE INVESTMENT ADVISOR DEFENDANTS TO INDUCE PLAINTIFFS TO PURCHASE THE SIB CD'S

11.

All of the Plaintiffs had accumulated life savings based upon hard work every day of their lives. In each case, Investment Advisors approached Plaintiffs and induced them to invest their life savings in the SIB CD's based upon certain assurances. As a part of this Plan, the Trust was designated as the "custodian" or trustee of the IRA's and Trust Accounts and used as a conduit to purchase to SIB CD's. Had the Trust and SEI not agreed to serve as "custodian" or trustee of accounts which held the SIB CD's, and turn a blind eye to the activities of SIB, it is unlikely that these schemes against the trust account holders could have been implemented or perpetuated which has resulted in the loss of their life savings

12.

Investment Advisor Defendants represented the following to Plaintiffs at the time Plaintiffs purchased or renewed the SIB CD's (collectively the "Material Representations"):

A. SIB's investments were invested in financial instruments, which could be readily liquidated to provide redemption payments to Plaintiffs on the SIB CD's with a minimum penalty.

B. Investment Advisor Defendants had evaluated the management and investment committees of SIB and, based upon Investment Advisor Defendants' evaluation, felt that the management and investment committees were competent and proficient to operate SIB.

C. SIB's multi-billion investment portfolio of assets employed a sizeable team of skilled and experienced analysts to monitor and manage the portfolio.

D. SIB's financial statements were audited and that the value of SIB's assets was independently verified by independent auditors and appraisers.

E. Investment Advisor Defendants had knowledge of the companies in which SIB had invested funds and believed the companies in which SIB had invested (i) had sufficient capital and cash flow to serve any debt or preferred return to SIB and (ii) had adequate debt to capital ratios which would satisfy the Plaintiffs that those companies were not overleveraged.

F. SIB was a bank regulated by the Antiguan government and was examined on a regular basis by the bank authorities.

G. The SIB CD's issued by SIB were called "certificates of deposits" in order to create a perception of security and limited degree of risk for the Plaintiffs and to create the impression and inference that the SIB CD's had the same degree of risk as certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve Board.

H. The SIB CD's were a safe investment vehicle suitable for long term investment with little or no risk relating to the repayment and redemption of the SIB CD's.

I. SIB and SGC had retained legal counsel to structure the investment and based upon the opinion and advice of counsel, SIB CD's were marketed in accordance with the state and federal laws of the United States and that Stanford's legal counsel had in fact approved the marketing of the product in the United States.

J. The Investment Advisor Defendants had the Plaintiffs' best interests at heart, and that no conflict of interest existed in recommending the SIB CD's

K. The Investment Advisor Defendants had verified (i) SIB's safety and security; and (ii) the consistent, double-digit returns on the bank's investment portfolio and there was little or no risk the money would not be repaid because the type of investment strategies that were employed and the unique investment opportunities available to SIB.

L. All of SIB's investments were arms-length transactions and there were no insider dealings between any affiliate of Stanford Group Company and Stanford Capital Management, including Allen Stanford, and SIB.

M. SIB was a profitable business and was realizing cash income from its investments.

13.

All of the above representations were inaccurate or false. Plaintiffs relied upon the truthfulness and accuracy of these facts and the assurances of Defendant that they had performed the required due

diligence on the operations of SIB, and the representations made by SIB to the Investment Advisor Defendants to determine the truthfulness of these facts. In truth and in fact, Investment Advisor Defendants never made the proper inquires and as a result violated their duties to Plaintiffs.

14.

In the alternative, Plaintiffs allege that Investment Advisor Defendants failed at all times to inform Plaintiffs that (i) Investment Advisor Defendants had not made these due diligence inquiries on Plaintiffs' behalf, and (ii) Investment Advisor Defendants had no knowledge, one way or another, whether the representations that were being made to the Plaintiffs were accurate.

15.

In the alternative, Plaintiffs allege that Investment Advisor Defendants made the necessary inquiries but failed to disclose the information to the Plaintiffs.

16.

In all events, the amount of the commissions received by the Investment Advisor Defendants on the sale of the SIB CD's impacted and impaired their objective evaluation of the relevant risks and issues and has resulted in substantial loss to the Plaintiffs. As proof of this fact, at a later point in time as SIB began to unravel in the late summer and fall of 2008, Investment Advisor Defendants failed to disclose to Plaintiffs the "growing storm" of SIB's liquidity crisis because of the financial impact that it would have on SGC and Investment Advisor Defendants' jobs and re-solicited the Plaintiffs' purchase of SIB CD's after

Investment Advisor Defendants had sufficient knowledge of the increased risk.

17.

At the time of the renewal of the SIB CD's, Plaintiffs were reassured of the safety of the SIB CD's, when, in truth and in fact, an inquiry into the liquidity of SIB and the SIB CD's would have shown Investment Advisor Defendants that SIB had invested in illiquid investments, SIB and the companies in which SIB had invested, was experiencing severe liquidity problems, and the only source of repayment were the new funds being raised from other purchasers of SIB CD's in a giant ponzi scheme.

BACKGROUND FACTS

A. THE "BANK" AND THE "CD'S"

18.

Investment Advisor Defendants are or were employees and investment advisors of and for the SGC and SCM. The Investment Advisor Defendants had a tremendous financial incentive in successfully selling the SIB CD's. SGC and the Trust was "addicted" to the income from the sale of SIB CD's and was not a viable company without the income from the sale of the SIB CD's.

19.

However, the SIB CD's were not certificates of deposit as such term is known in the financial industry. SIB, along with its affiliate SGC and SCM, called the SIB CD's "certificates of deposit" but, in truth and in fact these were nothing more than highly speculative debt instruments similar to junk

bonds. SIB, along with SGC and SCM, called itself a bank to create an impression of security, when in fact it was operating, in the best of circumstances, as a hedge fund, and in the worst of circumstances, as Allen Stanford's private bank account.

20.

In marketing the SIB CD's, SIB touted the liquidity of its investment portfolio. For example. in its marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Likewise, SIB trained SGC advisers that the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients."

21.

As of November 28, 2008, SIB reported $8.5 billion in total assets. SIB's primary product and source of deposits was the SIB CD's

B. THE BATON ROUGE PLAN

22.

Because of the favorable commission structure, Investment Advisor Defendants promoted the sale of the SIB CD's to the detriment of less risky financial products. The commission structure also provided a powerful incentive for Investment Advisor

Defendants to aggressively sell SIB CD'S to Plaintiffs.

23.

Because of the large commissions available from the sale of the SIB CD's, the Investment Advisor Defendants began immediately recommending the SIB CD's to the Plaintiffs and others through a marketing plan aimed at attracting large percentages of the wealth in the Baton Rouge area (the "Baton Rouge Plan"). Investment Advisor Defendants represented that SIB re-invested those funds in a "globally diversified portfolio" of assets

24.

The Investment Advisor Defendants targeted leaders in the community and promised high returns with safe certificates of deposit. These early investors received high returns to establish the legitimacy of the SIB CD's. The Investment Advisor Defendants then used the fact that known business leaders earned the promised return as a means to attract other investors.

25.

At the same time, SGC, through the Investment Advisor Defendants and others, created the appearance of stability by making large donations to Baton Rouge charitable organizations. In truth and in fact, this contrived appearance of success and interest in the Baton Rouge community was funded by the illicit commissions for the sale of the SIB CD's to SGC and indirectly from the loans SIB made to Allen Stanford.

26.

The Baton Rouge Plan was initiated to perfection in the Baton Rouge community. At the same time, SGC and the Investment Advisor Defendants were making substantial fees and cash flow from the Baton Rouge Plan.

27.

At the same time, the Investment Advisor Defendants were not making the necessary due diligence inquiries to satisfy the duties owed by Investment Advisor Defendants to the Plaintiffs.

28.

The successful introduction and completion of the Baton Rouge Plan was a key component to the overall success of the larger SIB CD scheme. Because of the size of the Baton Rouge market and an attendant concentration of wealth, along with the "buzz" created by high interest rates and trips on private jets, the ground was fertile for the Baton Rouge Plan. Thus, a substantial amount of SIB CD's was sold to residents of the Baton Rouge area.

29.

In truth and in fact, SIB was not truly a "bank" and the SIB CD's were not truly "certificates of deposit." Upon Plaintiffs' knowledge and belief, SIB was using the funds from the SIB CD's to either (i.) unsuccessfully invest in mostly illiquid investments that have little or no value or (ii.) line the pockets and pay for the profligate lifestyles of the principals of SGC and SCM, including Allen Stanford.

30.

As long as Investment Advisor Defendants were successful in selling new SIB CD's at a healthy rate, SIB was able to continue to "operate" as a going concern. However, SIB was confused about what was really a profit – it apparently felt that the ability to create cash flow from SIB CD's sales was the same thing as earning a profit. SIB, through the Investment Advisor Defendants' efforts, seemed to be following an approach that a dollar borrowed was a dollar earned.

31.

The Baton Rouge Plan operated for a period of approximately seven years with full steam ahead with an attitude of "laissez les bon temps rouller" – "let the good times roll". However, once investments began to contract in the later summer and fall of 2008 and holders of SIB CD's began to attempt to cash out the SIB CD's, the house of cards quickly collapsed.

32.

As the old saying goes, "You never know who is swimming naked until the tide goes down." In this case, Investment Advisor Defendants had been swimming naked by failing to make the necessary due diligence inquiries and Investment Advisor Defendants had failed to look underwater, in violation of their duty to Plaintiffs.

33.

Simply put, Investment Advisor Defendants had failed to make the simplest of inquiries about SIB, which would have shown the problems and risks of the SIB CD's. The Investment Advisor Defendants

failed to independently verify the information, which was provided to the Investment Advisor Defendants by SIB, which resulted in the losses of Plaintiffs.

THE NEGLIGENT REPRESENTATIONS

34.

During the course of Investment Advisor Defendants' relationship with Plaintiffs, the Investment Advisor Defendants made numerous negligent representations to Plaintiffs, which breached the duty owed by the Investment Advisor Defendants to the Plaintiffs. If Plaintiffs had been aware of the truth, Plaintiffs would not have purchased the SIB CD's.

35.

A. Representation No. 1. Investment Advisor Defendants negligently represented that SIB's investments were invested in liquid financial instruments, which could be readily liquidated to provide liquidity to the Plaintiffs' certificates of deposit with a minimum penalty.

36.

In selling the SIB CDs, SIB touted the liquidity of its investment portfolio. For example, in its SIB CD marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security" that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Likewise, SIB trained SGC advisers that the

"liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients."

37.

Investment Advisor Defendants, in the exercise of their duties to Plaintiffs as an investment advisor, should have known that these representations were not true. Investment Advisor Defendants failed to make appropriate inquiries or seek the appropriate verification to determine the veracity of such statements.

38.

In truth and in fact, SIB's investment portfolio was not invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Instead, the portfolio consisted primarily of illiquid investments or no assets at all. The Investment Advisor Defendants at all times failed to request that SIB disclose its financial statements, valuation reports, methodology of reporting net income, or positions reports to them so that the Investment Advisor Defendants could have adequate information to advise their client. The Investment Advisor Defendants never requested that SIB disclose the performance of these investments. Investment Advisor Defendants never disclosed to Plaintiffs that this information had not been provided and was necessary to make prudent decisions as to whether to invest in the certificates of deposit. Investment Advisor Defendants should have known that SIB's investments were not allocated as advertised by SIB's investment

objectives or as detailed in SIB's financial statements.

39.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the makeup of the portfolio of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for Investment Advisor Defendants' review prior to recommending the investments and receiving commissions on the investment.

40.

B. Representation No. 2. Investment Advisor Defendants negligently represented that SIB's financial statements were audited and prepared in accordance with generally accepted accounting principles and that the value of SIB's assets were independently valued by independent auditors and appraisers.

41.

Investment Advisor Defendants represented to Plaintiffs that SIB's financial statements were audited and prepared in accordance with generally accepted accounting principles and further that SIB's assets were independently valued by independent and governmental auditors and appraisers. Contrary to these representations to investors, SIB's assets were not audited or verified. Instead, SIB's accountant, C A S Hewlett & Co, a small local accounting firm in Antigua was responsible for auditing SIB's multi-billion dollar investment portfolio.

42.

In truth and in fact, the detailed financial statements of the assets of SIB were never requested or reviewed by Investment Advisor Defendants. Further, the financial statements were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). The assets on SIB's financials statement were not valued in accordance with "fair value" accounting principles. Investment Advisor Defendants in fact had no knowledge of the methodology used by SIB in recognizing and reporting income and made no attempt to analyze the operating net cash flow of SIB. In truth and in fact, SIB went to great lengths to prevent any true independent examination of those portfolios and SIB's internal accountants reverse engineered SIB's financial statements to report investment income that SIB did not actually earn.

43.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the financial reporting of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for the Investment Advisor Defendants to review prior to recommending the investments and receiving commissions on the investment.

44.

C. Representation No. 3. Investment Advisor Defendants negligently represented that professionals were investing and monitoring SIB's portfolio of assets and that SIB's multi-billion dollar investment portfolio

was monitored by a team of independent analysts.

45.

Investment Advisor Defendants represented to Plaintiffs that professionals were investing and monitoring SIB's portfolio of assets and that SIB's multi-billion dollar investment portfolio was constantly monitored by a team of analysts.

46.

In truth and in fact, in violation of their duty to Plaintiffs, Investment Advisor Defendants made no independent inquiry of this fact before representing this fact to the Plaintiffs. In truth and in fact, the vast majority SIB's multi-billion dollar investment portfolio was not monitored by a team of analysts, but rather by two people – Allen Stanford and James Davis. Contrary to Investment Advisor Defendants' representations to Plaintiffs, the Antiguan regulator responsible for oversight of the bank's portfolio, the Financial Services Regulatory Commission, did not audit SIB's portfolio or verify the assets of SIB as SIB claims in its financial statements.

47.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the lack of professionals investing and monitoring the portfolio of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for the Investment Advisor Defendants to review prior to recommending the investments to Plaintiffs and receiving commissions on the investment.

48.

D. Representation No. 4. Investment Advisor Defendants negligently represented that SIB was a "bank" that was regulated by the Antiguan government and that the SIB CD's were "certificates of deposit" to create an appearance of safety and trust.

49.

Investment Advisor Defendants represented to the Plaintiffs that the SIB CD's were safe because SIB was a "bank" and that the Antiguan regulator responsible for oversight of the bank's investment portfolio, the Financial Services Regulatory Commission audited its financial statements. Further, the Investment Advisor Defendants represented to the Plaintiffs that the SIB CD's were identical to certificates of deposit from banks located in the United States of America.

50.

In truth and in fact, SIB was not a "bank" but was, at best, a speculative hedge fund and, at worse, Allen Stanford's piggy bank.

51.

Further, the SIB CD's were "certificates of deposit" in name only. These representations were made for the Plaintiffs to believe that they had the same degree of risk of certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve Board. In truth and in fact, the certificates of deposits were "junk bonds" issued to finance a hedge fund with a high degree of risk because of the volatility of the market and extent of leverage.

52.

Defendant negligently represented to Plaintiffs that SIB was a bank and that the SIB CD's were certificates of deposits. Investment Advisor Defendants negligently failed to disclose to Plaintiffs the difference between a junk bond and a certificate of deposit and negligently advised Plaintiffs to purchase the SIB CD's when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

53.

E. Representation No. 5. Investment Advisor Defendants negligently represented (i.) that its legal counsel had reviewed the formation and operation of SIB and the marketing of the SIB CD's and (ii.) that the operation of SIB and the sale of the SIB CD's was in accordance with the law.

54.

Investment Advisor Defendants represented (i) that its legal counsel had reviewed the formation and operation of SIB and the marketing of the SIB CD's and (ii) that the operation of SIB and the sale of the SIB CD's were in accordance with the law. In truth and in fact, the operation was not in accordance with the laws of the United States based upon the recent reports of the receiver of SGC. Had the Investment Advisor Defendants known that SIB was not being operated in accordance with the law, Plaintiffs would not have purchased the SIB CD's.

55.

F. Representation No. 6. Investment Advisor Defendants negligently represented that based upon their principal-client relationship, the Investment Advisor Defendants had the Plaintiffs' best interest at heart. The Investment Advisor Defendants further failed to disclose the conflict of interest that arose from the significant commissions that the Investment Advisor Defendants realized by recommending and selling the SIB CD's and never disclosed that SGC as a whole was reliant upon the promotion of the SIB CD's product.

56.

The Investment Advisor Defendants received commissions on the sale of the SIB CD's that were exponentially higher than would result from the sale of a certificate of deposit from a United States regulated bank. The Investment Advisor Defendants failed to disclose the conflict of interest apparent in such an arrangement to the Plaintiffs. Further, the Investment Advisor Defendants failed to disclose that SGC as a whole was reliant upon the promotion of the SIB CD'S product and that the failure to sell the SIB CD's would affect the going concern value of SGC and the employment security of the Investment Advisor Defendants

57.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to their conflict of interest and attempt to serve two masters. Despite this conflict, Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB

CD's of SIB prior to recommending the SIB CD's and receiving commissions on the purchase

58.

G. Representation No. 7. Investment Advisor Defendants negligently represented that each Defendant, as each Plaintiff's investor advisor, had knowledge of SIB's investments and the profitability of SIB's investments and had evaluated and valued the assets of SIB, and, as a result, there was little or no risk the money would not be repaid because the types of investment strategies that were employed by SIB and the unique investment opportunities available to SIB.

59.

Investment Advisor Defendants negligently represented that each Defendant, as each Plaintiff's investor advisor, had knowledge of SIB's investments and the profitability of SIB's investments and had evaluated and valued the assets of SIB, and, as a result, there was little or no risk the money would not be repaid because of the types of investment strategies that were employed by SIB and the unique investment opportunities available to SIB. In truth and in fact, it now appears that Investment Advisor Defendants had no knowledge of the investments of SIB

60.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that Investment Advisor Defendants had no knowledge of the specific assets in which SIB was investing or the value of those investments. If Investment Advisor Defendants had

disclosed to Plaintiffs that Investment Advisor Defendants had no knowledge of the assets in which SIB was investing or the value of those assets, Investment Advisor Defendants would not have purchased the SIB CD's. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

61.

H. Representation No. 8. Investment Advisor Defendants negligently represented that all of the investments were arms length transactions and there were no insider dealings between any affiliate of SGC and SCM, including Allen Stanford, and SIB.

62.

Investment Advisor Defendants negligently represented that all of the investments were arms length transactions and there were no insider dealings between any affiliate of SGC and SCM, including Allen Stanford, and SIB. Investment Advisor Defendants never described to Plaintiffs the amount of profit that SGC was realizing from the operation of SIB or from the sale of the SIB CD's or the amount of funds that SIB had loaned to entities related to SGC and Allen Stanford. In truth and in fact, based upon information obtained from the receiver, substantial loans in excess of one billion dollars, which did not meet the investment criteria of SIB, had been made by SIB to Allen Stanford.

63.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that they had made no inquiry of whether insider loans existed. If Investment Advisor Defendants had disclosed to Plaintiffs that the Investment Advisor Defendants had made no inquiry concerning the existence of the insider loans or the amount of fees that SGC was earning from SIB or the level of importance the Baton Rouge Plan was to the successful operation of SGC, Investment Advisor Defendants would not have purchased the SIB CD's. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD's of SIB when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

64.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that a substantial portion of the income of SGC and Trust was being generated from the sale of the SIB CD's, that SGC was addicted to this commission income, and that any termination of the sale of the SIB CD's would materially and adversely affect the going concern of the Stanford financial empire.

65.

I. Representation No. 9. Investment Advisor Defendants negligently represented that, at the time of the renewal of the SIB CD's, the SIB CD's were liquid, when in truth in fact, an inquiry of the liquidity of the investments would have shown Investment Advisor Defendants that the SIB CD's were invested in

illiquid investments and the only source of repayment were the new funds being raised from other purchasers of SIB CD's.

66.

Investment Advisor Defendants represented that SIB's investment were in liquid financial instruments. Contrary to these representations, SIB's investment portfolio was not invested in liquid financial instruments or allocated in the manner described in its promotional material and public reports. Instead, a substantial portion of the bank's portfolio was placed in illiquid investments, such as real estate and private equity.

67.

Plaintiffs accepted these representations and became convinced that the SIB CD's were in the best interest of Plaintiffs. At the direction of Investment Advisor Defendants, Plaintiffs invested in the SIB CD's.

68.

However, beginning in late 2007 and early 2008, SIB began experiencing liquidity problems and was not able to redeem the SIB CD's. Because of these problems, a special marketing plan was setup by SGC to encourage the marketing of the SIB CD's. Investment Advisor Defendants failed to inquire about the liquidity of the SIB CD's during this time period and failed to inform the Plaintiffs of the liquidity problems at this time. Further, during this same time period, the state of Louisiana, Office of Financial Institutions, commenced an examination of Trust and advised the Trust that (i) no further SIB CD's should be sold because of the Trust's heavy

investment in SIB CD's and (ii) in 2008, the Trust should remove all SIB CD's from its portfolio. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

69.

J. Representation No. 10. Investment Advisor Defendants negligently represented that SIB was a profitable business and was realizing cash income from its investments.

70.

Investment Advisor Defendants represented to Plaintiffs that SIB was a profitable company and was realizing net profits in the form of cash payments from the companies in which SIB invested. In truth and in fact, the net cash flow to SIB, other than the net cash flow from new investors was minimal. The net profits were fictitiously created by revaluation of assets and asset swaps that never occurred. Had Plaintiff known that SIB's earnings were fictitious, they would never have invested funds or sought renewal of their obligations.

71.

K. Representation No. 11. Investment Advisor Defendants negligently represented that (i.) Investment Advisor Defendants had knowledge of the companies in which SIB had invested funds; (ii.) believed the companies had sufficient capital and cash flow to service any debt or preferred return to SIB and (iii.)

their debt to capital ratios were such that the investors would not have to be concerned that the companies were overleveraged.

72.

Investment Advisor Defendants represented to Plaintiffs that they had knowledge of the companies in which SIB invested and that each of these companies has sufficient equity and earnings to repay any funds advance by SIB. In truth and in fact, Investment Advisor Defendants had no knowledge of where SIB had invested the funds from the SIB CD's and made no independent inquiry on the management, financial operations, and capital structure, and leverage of the companies in which SIB invested.

73.

L. Representation No. 12. Investment Advisor Defendants negligently represented that the Trust investment was prudent and safe and the Trust was being operated in accordance with Louisiana law, when in truth in fact, the Office of Financial Institutions for the state of Louisiana had ordered and limited the further sale of SIB certificates during 2007 and in 2008 and ordered that the Trust divest itself of all SIB certificates.

74.

The Trust was chartered in and regulated by the state of Louisiana. Upon information and belief as part of its regulatory oversight, the state of Louisiana, Office of Financial Institutions perceived a risk associated with the sale of the SIB CD's and diversification of the Trust's trust portfolio. The

state of Louisiana, Office of Financial Institutions also ordered that the Trust cease purchasing additional SIB CD's. In 2008, based upon information and belief, the state of Louisiana ordered the Trust to divest itself of all SIB certificates of deposit. This information was never disclosed to Plaintiffs.

STANFORD TRUST COMPANY AND THE TRUST DEFENDANTS

75.

Stanford Trust Company is chartered in Louisiana and operated as a Louisiana Trust Company.

76.

A substantial portion of the business of the Trust was the serving as custodian for IRA and Trust Accounts which held the SIB CD's.

77.

A self-directed IRA is an IRA that requires the account owner to make investment decisions and investments on behalf of the retirement plan. The Internal Revenue Code ("Code") and Internal Revenue Service ("IRS") regulations require that either a qualified trustee or custodian hold the IRA assets on behalf of the IRA owner. Generally, the trustee/custodian will maintain the assets and all transactions and other records pertaining to them, file required IRS reports, issue client statements, and perform other administrative duties on behalf of the self-directed IRA owner of the IRA.

78.

The Trust was intended to qualify as an individual retirement account custodian under Internal Revenue Code Section 408. The Trust expressly agreed with Plaintiffs that it would comply with IRS regulations. Any provision of the Plan and Trust Agreement (or the associated IRA Application or Terms and Conditions) was invalid to the extent it is inconsistent, in whole or in part with Code Section 408 and the regulations issued thereunder.

79.

When a person would retire from a company, Stanford Trust and Investment Advisor Defendants would actively seek the funds from the retirement funds of the former employees and would attempt to have these funds rolled over into IRA's of which either Pershing or the Trust was the custodian.

80.

In their capacity as trustee, the Trust took title, custody, possession, and ownership of the funds in the Trust Plaintiffs IRA's and Trust Accounts, which were entrusted to them by each Plaintiff.

81.

Trust entered into standardized trust agreements with each Plaintiff. In exchange for annual account fees, administrative and other fees paid by Trust Plaintiffs, Trust undertook the responsibility of acting as custodian of the IRA's and Trust Accounts, taking title, custody, possession, and ownership of the funds in the IRA's and Trust Accounts. The Trust breached the standardized Trust Agreement.

82.

Under the Trust Agreement, the Trust was required to provide Plaintiffs with account statements that reflected the value of the assets in the IRA's and Trust Accounts which must be reported as accurately as possible using the resources available to it. Trust Company was to provide Plaintiffs with quarterly account statements purportedly reflecting the value of their IRA's and Trust Accounts, when in the fact those accounts had little or no value because SIBC had nonexistent assets. The Trust violated the agreement by providing Plaintiffs with inaccurate account statements and maintaining inaccurate fiduciary books and records.

83.

In exchange for administrative review fees, Trust undertook the responsibility of acting as a custodial trustee, holding legal title to the IRA's and Trust Accounts on behalf of Plaintiffs.

84.

In order to receive the rollover of the funds from each Plaintiffs former retirement account in to the Trust, each Investment Advisor Defendant would generally require the trust account beneficiary to execute an accredited investor form to certify that his or her net worth was in excess of $1 million dollars This requirement was mandated by law to insure that the investment in the SIB CD was suitable for the Plaintiff retirees.

85.

Further, as a custodian of the Trust Accounts or Trustee of an account, the Trust and the Trust

Defendants were required to independently verify the accuracy of the information from each Plaintiff which was being represented by the Investment Advisor Defendants because of the affiliate relationships.

86.

Further, based upon information and belief, the Office of Financial Institutions ("OFI") for the State of Louisiana informed the Trust in 2007 that it should cease marketing the SIB CD's because of the need to diversity asset and because of the risks associated with the operation of the foreign bank.

87.

Further, based upon information and belief, the OFI informed Stanford that all SIB CD's should be removed from the Trust in 2008 because of the risk associated with the CD's and the SIB's inability to inform the OFI what assets, if any, in which the funds from the CD's were invested.

88.

The Trust and Trust Defendants violated their duties to Plaintiffs despite warnings by the OFI of the risk of SIB's investment strategies and operations. OFI already knew of the risk associated with the sale of the SIB CD's and informed Trust Defendants of this risk, yet the Trust Defendants did nothing to change its operational procedures to prevent another catastrophe or inform the IRA and Trust Accounts holders of the new risks perceived by OFI.

89.

At all times, the Trust Defendants, who were officers and directors of the Trust or SG had a duty to the Trust and to the Plaintiffs to monitor, set policy and develop internal controls to:

A. Verify the accuracy of the information which was being represented by the Investment Advisor Defendants or verify the truthfulness of the representations made by Investment Advisor Defendants as to the risk of the SIB CD's;

B. Verify that the investment in the SIB CD's was suitable for each custodial account or trust account;

C. Assure that the sale of the SIB CD's were marketed and administered in accordance with the requirements of OFI and to initiate a plan of full disclosure of any regulatory issues raised by the OFI to the beneficiary of the IRA's and Trust Accounts so that they would have the option to change investment strategy and to open trust accounts or make other investments with different, safer, more diversified investments;

D. Assure that the SIB CD, the assets of the Trust, and SIB were properly valued on a periodic basis;

E. Assure that the Trust was aware of where the assets of SIB were invested in order to be in a position to evaluate the risk of the trust investment based upon the prudent man standard;

F. Fulfill its legal obligations required by the contracts entered into between the Trust and Trust Defendants and the settlor or grantor of any trust as required by law;

G. Implement a program of risk management for the Trust and review of the investment portfolio in order to be incompliance with the fiduciary duties created by the agreements and the law;

H. Determine or inquire or monitor as to what representation or warranties were being made to Plaintiffs by Investment Advisor Defendants at the time the rollover funds were solicited;

I. Implement a plan of risk management to assure broad diversification of assets so at to minimize the risk of the investment in high risk, speculative, liquid securities;

J. Advise the beneficiaries, advisors, or grantors of the Trust of the risk profile of the type of investment that was being made with its funds.

90.

In truth and in fact, the Trust Defendants failed to perform any of these functions. Plaintiffs have been damaged as a foreseeable result of the negligence, gross negligence and/or recklessness of the Trust and the Trust Defendants, The Trust Defendants are liable for the Trust's negligence, gross negligence and/or recklessness, as legal successors by merge or otherwise, and/or as controlling persons of one of more of the Trust.

91.

Trust and Trust Defendants had a fiduciary relationship with Plaintiffs which gives rise to a fiduciary duty of loyalty, a duty to exercise reasonable care and skill, and a duty to deal with Plaintiffs fairly and impartially. The conduct of the Trust and Trust Defendants described in this Complaint constitutes a breach of their fiduciary duties.

92.

As a fiduciary, Trust and Trust Defendants were at a minimum required to insure that Plaintiffs' money was safe, that the periodic statements of value issued by the Trust accurately reflected the actual values of Plaintiffs' accounts, and the investments by SIB were legitimate.

93.

The Trust was required under their contracts with the Plaintiffs to report truthfully and accurately to them the account values and the assets held in the IRA's and Trust Accounts, which it failed to do. The trust, as custodial agent and as trustees of certain trusts, obligated itself to certain contractual duties, including the duty to report customers' holding and the accurate value thereof timely and accurately. As officers and directors of the Trust, the Trust Defendants had a duty to Plaintiffs to assure that this duty was in fact implemented.

94.

The Trust was required to take custody of the securities, or at a minimum verify that the value of the assets identified in the financial statements in SIB to insure that the certificate of deposit was

valued correctly in the trust accounts. As officers and directors of Trust, Trust Defendants had a duty to plaintiff to assure that this duty was in fact implemented.

95.

The Trust, which had exclusive legal control over the IRA and Trust Account assets, failed to hold, safe keep, or adequately review and value the IRA and Trust Account assets, which the Plaintiffs entrusted to the Trust and Trust Defendants. As officers and directors of the Trust, Trust Defendants had a duty to plaintiff to assure that this duty was in fact implemented.

96.

Plaintiffs have suffered substantial financial injury as a result of the conduct alleged herein.

97.

Trust Defendants knew or, absent negligence, gross negligence or recklessness, should have known, about the many red flags, concerning the Stanford investments, as alleged herein, including the warning by OFI, about the integrity of the SIB.

98.

Trust Defendants knew or, absent negligence, gross negligence or recklessness, should have known that the account statements it received from SIB, were falsified, and did not accurately reflect the assets in the Trust Accounts.

99.

Trust Defendants were negligent, grossly negligent and/or reckless in not modifying their procedures, not verifying that the assets existed, and

not properly valuing the assets in the Trust Accounts. Instead, Stanford Defendants, in breach of their duty of care, relied upon SIB to hold the assets and perform the independent valuation. The Trust and Trust Defendants were negligent, grossly negligent and/or reckless in not investigating and confirming the accuracy of SIB valuation, and in otherwise allowing SIB and SG to convert, commingle and abscond with the assets in the Trust Accounts, that the Plaintiffs entrusted to Trust.

THE ROLE OF SEI

100.

SEI and the Trust entered into an agreement which SEI would perform the trust functions of accounting and reporting of the IRA investments in SIB CD's. The same function was performed by Pershing for all funds and marketable securities.

101.

SEI is a leading global provider of outsourced asset management, investment processing and investment operations solutions. SEI provided investment processing, fund processing, and investment management business outsourcing solutions to the Trust by utilizing SEI's proprietary software system to track investment activities in multiple types of investment accounts, and allowed the Trust to outsource trust and investment related activities.

102.

As a part of the functions of SEI, SEI was compensated to account for and value the investments of the Trust and each of the Plaintiffs in

the SIB CD's. As such, SEI agreed to perform the following:

A. Assure that the SIB CD's were administered in accordance with the requirements of OFI and to value the assets of the IRA's and Trust Accounts so that each Plaintiff would have the option to change investment strategy and to open new IRA accounts with different, safer, more diversified investments in the event the value changed;

B. Assure that the SIB CD's, the assets of the Trust, and SIB were properly valued on a periodic basis;

C. Determine the value of the assets of SIB and whether the funds were invested in order to be in a position to evaluate the risk of the trust investment based upon the prudent man standard;

D. Fulfill its legal obligations required by the contracts entered into between the Trust and each IRA beneficiary and Trust Account beneficiary as required by law;

E. Implement a program of risk management and review of the investment portfolio in order to be incompliance with the fiduciary duties created by the agreements and the law;

F. Implement a plan of risk management to assure broad diversification of assets so at to minimize the risk of the investment in high risk, speculative, liquid securities;

G. Advise the beneficiaries of the Trust of the risk profile of the type of investment that was being made with its funds.

103.

SEI, in particular, put its internationally known and respected brand name behind Stanford Financial and the Trust and SIB, thereby lending recognition and credibility to Stanford Financial and the Trust and SIB and supporting its sales efforts.

104.

SEI had knowledge that the SIB CD's were being marketed to individual investors who had IRA's and Trust Accounts because that is the primary valuation and reporting performed by SEI. SEI had full knowledge that the services it was performing was directly for, and in connection with the offering of the SIB CD's and was an integral part of the process used by SG and the Trust to promote and sell SIB CD's to clients in Louisiana. SEI was aware that they were involved assisting a group that was impermissibly operating as an investment company selling unregistered securities from, by and through Louisiana.

105.

SEI actively and materially aided SG and the Trust to perpetrate the massive Ponzi scheme now alleged by the SEC.

106.

SEI consistently, year after year, allowed their names to be mentioned prominently in SIB's Annual Reports, alongside Allen Stanford and Jim Davis and the rest of the SIB Board of Directors and the management of SIB, therefore lending more legitimacy to the overall operations of SG, the Trust and SIB.

107.

In choosing to accept the request of SG, the Trust and SIB to act as the de facto administrator of the IRA's and Trust Accounts, SEI assumed a duty to disclose all of the information it knew about SG, the Trust and SIB and not to make partial disclosures that might, and did, convey a false impression about SIB. A defendant may not deal in "half-truths" and SEI had more access to information regarding SG, the Trust and SIB than Plaintiffs did and clearly had an incentive to market and sell SIB CD's to Plaintiffs so that SIB, and hence SG and the Trust, could continue in business and continue contracting SEI services. Moreover, SEI was clearly on notice that the investing public in Louisiana, who were being actively solicited to roll over the proceeds of their retirement accounts into SIB CD's, were being offered securities, but SEI made no attempt to determine whether the offering was a public offering or whether the offering to the retirees met the proper disclosure requirements.

108.

SEI knew that Plaintiffs would and did rely on the offering statements in making their investment decisions concerning buying the SIB CD's; indeed the very purpose of the reports rendered by SEI was to influence the investors' decision-making process in favor or purchasing and continuing to hold SIB CD's.

109.

By agreeing to assist SG, the Trust and SIB to sell and promote investment products, SEI actively joined the SG and Trust sales force and therefore knew or should have known that they were acting as links in the chain of selling unregistered securities to

Plaintiffs from, by and through Louisiana. But for Defendants' participation, Stanford Financial and Stanford Trust and SIB could not have sold unregistered securities to Plaintiffs from, by and through Louisiana.

110.

SEI intentionally and actively aided and abetted SG and the Trust to operate as an illegal hedge or mutual fund in Louisiana and sell securities from, by and through Louisiana, by means of the conduct described herein. With full knowledge that SG and the Trust was selling securities from, by and through Louisiana, SEI aided and abetted and perpetuated SG, the Trust and SIB's violations of the Louisiana Securities Law by continuing to provide the letters herein described for the known purpose of luring new customers like Plaintiffs to SG, the Trust and SIB and selling them the worthless SIB CD's.

111.

Said conduct was designed to perpetuate the SG and Trust "myth" regarding the safety and security of the SIB CD's, and to support the marketing, promotional and sales activities described herein. SEI's actions as described herein allowed SG, the Trust and SIB to continue to sell securities to Plaintiffs from, by and through Louisiana using untruths and materially misleading omissions.

112.

By their conduct described herein, SEI participated with SG, the Trust and SIB in a fraudulent scheme, making Defendants directly liable for fraud. In particular, Defendants made the conscious decision to participate in the scheme by

joining the SG and Trust sales force to market promote and advertise SIB to prospective clients in order to assist and enable SG and the Trust to continue to sell SIB CD's based on the misrepresentations that they were fully insured. SEI's actions in participating in the fraudulent scheme are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in the Trust as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

113.

Defendant SEI is directly liable for the acts and omissions of any subsidiary that performed any of this functions or failed to perform any of these function and each subsidiary is the alter ego of SEI and conducted the business including the schemes described herein. Specifically, SEI owns, controls, and dominates each subsidiary listed on its website under www.SEIC.com to such an extent that all subsidiaries in reality functions as a mere division or branch of SEI. Indeed SEI and all of its subsidiaries, operate as one single unified worldwide business unit or single business enterprise, all operating under the SEI brand, international trademark or trade name and logo, which is prominently displayed on all of the SEI documents and advertising. SEI controls the manner in which its subsidiaries are perceived by the public and therefore intentionally creates the impression in the minds of third parties that SEI is one unified, global entity that acts as a single unit. SEI's own website touts its global approach to client service, in which SEI combines its global resources to offer the full benefit of every service that SEI offers worldwide.

THE MICROCHIP IDENTIFICATION LION SYSTEMS, INC. RETIREMENT PLAN

114.

Jeanne Anne Mayhall ("Mayhall") and John Wade ("Wade") are owners of a business known as Microchip Identification Systems, Inc. In or around September, 2007, Timothy Parsons approached Mayhall and Wade and recommended that they invest all of the proceeds of the company pension plan in SIB CD's. The name of the company retirement plan is Microchip Identification Systems, Inc. Retirement Plan (the "Pension Plan").

115.

After consulting with compliance officers at SG, Mayhall, and Wade as representatives of the Pension Plan were informed by Parsons that the SIB CD's were purchased in their individual names and not in the names of the Pension Plan. This was clearly contrary to the policies of the Trust and the law regulating the Pension Plan. Representatives of SG did not explain why SIB CD's should not be purchased in their individual names rather than the name of Pension Plan, when in fact the funds were owned by the Pension Plan and when, in all other instances, the Trust had allowed the SIB CD's to be purchased in the name of other retirement plans

116.

Based upon statements made by Mark Tidwell, Rhonda Lear Davis, as a compliance office, recommended that the transaction be structured in this manner. This recommendation was made because of the prohibitions that were applied by the state of Louisiana on the investment activities of the

Trust as alleged in paragraphs 87 to 88 of this Petition.

117.

In truth in fact, the actions of Parsons and the recommendations of Davis were improper and has resulted in substantial loss and damage to the Pension Plan and to Mayhall and Wade.

118.

Had this information been disclosed to Mayhall, Wade and Pension Plan, Pension Plan would not have purchased the SIB CD's.

INSURANCE COVERAGE

119.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided errors and omissions liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the errors and omissions liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

120.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided directors and officers liability coverage for Trust Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the directors and officers liability policies provides coverage for damages to

Plaintiffs caused by the actions and inactions of Trust Defendants and Investment Advisor Defendants.

121.

At all or relevant times ABC Bond Company provided fidelity bond coverage for Trust Defendants and Investment Advisor Defendants. Each was an insured under the respective fidelity bonds. Further, each of the fidelity bonds provides coverage for damages to Plaintiffs caused by the actions and inactions of Trust Defendants and Investment Advisor Defendants.

122.

At all or relevant times RST Insurance Companies provided comprehensive general liability coverage for Trust Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the comprehensive general liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of Trust Defendants and Investment Advisor Defendants.

Investment Advisor Defendants
(Counts One to Six)

COUNT ONE
NEGLIGENCE

123.

Paragraphs 1 to 74 are incorporated herein by reference.

124.

Investment Advisor Defendants owe to Plaintiffs a duty of due care as their investment advisors. This

duty includes the obligations to perform due diligence on Plaintiffs' behalf prior to making an investment in the SIB CD's and to not make representations to the Plaintiffs about facts that the Investment Advisor Defendants had not independently confirmed.

125.

Defendants breached this duty of care and were negligent in the performance of their duties as investment advisor as set forth above.

126.

Plaintiffs have been damaged by Investment Advisor Defendants material breaches of duty in an amount to be shown at the trial of this matter.

COUNT TWO
BREACH OF CONTRACT

127.

Paragraphs 1 to 74 are incorporated herein by reference.

128.

A written or oral agreement existed between Plaintiffs and Investment Advisor Defendants. The terms of the agreement were that Investment Advisor Defendants would advise Plaintiffs concerning the risk of certain investments by spending the time necessary to evaluate the investment.

129.

Investment Advisor Defendants breached the terms of this agreement by not spending the proper time necessary to evaluate the investment and/or

perform due diligence on the investment. Investment Advisor Defendants failed to obtain the information, which were material to Plaintiff's investment decision in the SIB CD's and failed to inform Investment Advisor Defendants of the compensation arrangements between SGC and SIB. In doing this, Investment Advisor Defendants have breached a contract or contracts with Plaintiffs.

130.

The actions of Investment Advisor Defendants have further breached their implied duties of good faith and fair dealing.

131.

Plaintiffs have been damaged by Investment Advisor Defendants material breaches of contract in an amount to be shown at the trial of this matter.

COUNT THREE
NEGLIGENT REPRESENTATION

132.

Paragraphs 1 to 74 are incorporated herein by reference.

133.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have made negligent representations to Plaintiffs.

134.

In the course of their business, Investment Advisor Defendants made representations to Plaintiffs in which they supplied false information.

135.

Investment Advisor Defendants made these untrue representations for the guidance of Plaintiff, and Plaintiffs justifiably relied on these false representations.

136.

Investment Advisor Defendants did not exercise reasonable care or competence in obtaining the accuracy of the information set forth in the Material Representations and communicating the correct information to Plaintiffs.

137.

Investment Advisor Defendants' negligence has caused damage to Plaintiffs in an amount to be shown at the trial of this matter.

COUNT FOUR
BREACH OF FIDUCIARY DUTY

138.

Paragraphs 1 to 74 are incorporated herein by reference.

139.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have breached the fiduciary duties owed to plaintiffs by Investment Advisor Defendants.

140.

The relationship of trust and confidence between Plaintiffs and Investment Advisor Defendants gave rise to a fiduciary duty on the part of Investment Advisor Defendants. Investment Advisor Defendants therefore owed a duty to Plaintiffs to act

fairly and in the utmost good faith in all of their transactions with Plaintiffs, to make full and fair disclosure of all material facts to Plaintiffs, not to take advantage of their relationship with the Plaintiffs for personal gain, and to act openly and honestly regarding their transactions with Plaintiffs.

141.

Investment Advisor Defendants breached this fiduciary duty by acting in a reckless manner in failing to determine the accuracy of the Material Representations.

142.

Investment Advisor Defendants violated they fiduciary duty when they failed to disclose their conflicts of interest as described above.

143.

As a result of the foregoing breaches of fiduciary duty by Investment Advisor Defendants, Plaintiffs are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT FIVE
UNFAIR TRADE PRACTICES

(La. Rev. Stat.§ 51:1401, *et seq*.)

144.

Paragraphs 1 to 74 are incorporated herein by reference.

145.

Based upon the above allegations, Investment Advisor Defendants have violated the Louisiana Unfair Trade Practices Act, La. Rev. Stat. § 51:1401, *et seq*. (the "Act"), and such actions constitute

deceptive trade practices within the meaning of the Act.

146.

Accordingly, Plaintiffs are entitled to damages under the Act and are entitled to reasonable attorneys' fees, as provided for therein.

COUNT SIX
VIOLATION OF THE LOUISIANA SECURITIES LAW

147.

Paragraphs 1 to 74 are incorporated herein by reference.

148.

Investment Advisor Defendants have violated the Louisiana Securities Act, La R.S. 51:701, *et seq.*

149.

All Investment Advisor Defendants sold securities to Plaintiff within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Act Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of material facts, which made their statements misleading in the light of the circumstances in which they were made.

150.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Act

151.

In addition, Investment Advisor Defendants sold securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana.

152.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. Investment Advisor Defendants are liable based upon Section 714 (A) and (B) of the Louisiana Securities Law. Trust Defendants made no attempt to inquire whether SIB was marketing of the unregistered securities which would have required SIB to disclose much more extensive information concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law and attempted to circumvent this requirement by designating certain persons as being suitable for the investment, when they were not.

153.

Investment Advisor Defendant made the referenced representations in reckless disregard of the truth, and could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) of the Louisiana Securities Act.

154.

In accordance with Section 712(b) of the Louisiana Securities Act, every, or director of such person liable under 714(A)or every person occupying a similar status or performing similar functions, who participates in any material way in the sale is liable

jointly and severally with and to the same extent as the person liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist.

155.

The Investment Advisor Defendants could have, in the exercise of reasonable care, determined the existence of the facts set forth in paragraphs 34 to 74, or in the alternative, determine the omission of certain facts that was making the offering of the SIB CD's misleading.

156.

Plaintiffs relied on the foregoing material representations and/or omissions to their detriment.

157.

Investment Advisor Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

158.

Investment Advisor Defendants made the referenced representations in reckless disregard of the truth or in the alternative could have discovered

these facts if he had exercised "reasonable care" as set forth in Section 714(B) of the Louisiana Securities Law.

159.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs has sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter and a return of all amounts that have been invested.

Trust Defendants
(Counts Seven to Thirteen)

COUNT SEVEN
NEGLIGENCE

160.

Paragraphs 1 to 122 are incorporated herein by reference.

161.

Trust Defendants owe to Plaintiffs a duty of due care as an officer and director of the Trust Company that solicited the rollover of their IRA's and Trust Accounts. This duty includes the obligations to perform due diligence on Plaintiffs' behalf prior to making an investment in the SIB CD's and to not make representations to the Plaintiffs about facts that the Trust Defendants had not independently confirmed.

162.

Defendants breached this duty of care and were negligence in the performance of their duties as trust advisors as set forth above.

163.

Plaintiffs have been damaged by Trust Defendants material breaches of duty in an amount to be shown at the trial of this matter.

COUNT EIGHT
NEGLIGENT REPRESENTATION

164.

Paragraphs 1 to 122 are incorporated herein by reference.

165.

Trust Defendants had a duty to Plaintiffs to provide accurate information. Trust Defendants have made negligent representations to Plaintiffs.

166.

In the course of their business, Investment Advisor Defendants made representations to Plaintiffs in which they supplied false information.

167.

Investment Advisor Defendants made these untrue representations for the guidance of Plaintiff, and Plaintiffs justifiably relied on these false representations.

168.

Trust Defendants did not exercise reasonable care or competence in obtaining the accuracy of the information set forth in the Material Representations and untrue representation of Investment Advisors Defendants despite its fiduciary obligations to the Plaintiffs and the affiliate relationship between Trust, SIB and SG.

169.

Trust Defendants' failed to supervise the activities of Investment Advisor Defendants in representing the interest of the Trust Company. The negligence of the Trust Defendants in failing to supervise the Investment Advisor Defendants or ascertain the accuracy of the information represented by Investment Advisor Defendants has caused damage to Plaintiffs in an amount to be shown at the trial of this matter.

COUNT NINE
BREACH OF FIDUCIARY DUTY

170.

Paragraphs 1 to 122 are incorporated herein by reference.

171.

Plaintiffs show that Trust Defendants have breached the fiduciary duties owed to Plaintiffs by Trust Defendants.

172.

The relationship of trust and confidence between Plaintiffs and Trust Defendants gave rise to a fiduciary duty on the part of Trust Defendants. Trust Defendants therefore owed a duty to Plaintiffs to act fairly and in the utmost good faith in all of their transactions with Plaintiff, to make full and fair disclosure of all material facts to Plaintiff not to take advantage of their relationship with the Plaintiffs for personal gain, and to act openly and honestly regarding their transactions with Plaintiffs, and to advise Plaintiffs of any risk that becomes

known to Trust Defendants during the course of the investment.

173.

Trust Defendants, and each of them, had during the relevant period a duty to use due care and protect Plaintiffs from injury, which included, among other things, a duty to verify, ensure, and adequately investigate the truthfulness and accuracy of the statements they made, as well as to refrain from disseminating false and misleading statements.

174.

As set forth above, Trust, as custodial trustee, obligated itself to, inter alia: perform administrative reviews of investments' take custody of investments; execute subscription agreements only upon a review of the investment and a determination of investor suitability in accordance with then current regulations; review and have on file Private Placement Memoranda; timely and accurately report customer' holdings and the accurate value thereof to both customers; and to enforce the rights and remedies available to holders of SIB CD's. The Trust and Trust Defendants by and through the conduct of the named defendants and its other agents, breached one or more of these duties in its dealings with respect to the SIB CD's.

175.

Trust Defendants breached their fiduciary duty by acting in a reckless manner in failing to determine the accuracy of the material Representations and in failing to disclose certain information relating to the investigations of the state of Louisiana at the time

the credit worthiness of the SIB CD's presented an issue to OFI.

176.

A fiduciary cannot serve two masters—the Stanford Group and the Plaintiffs. Trust Defendants violated their fiduciary duty when they failed to disclose their conflict of interest and divided loyalty at the time of the OFI orders based upon their loyalty to SIB and SG verses their loyalty to customers of the Trust. Trust Defendants made a decision not to disclose this information to Plaintiffs so that the operation of SIB, SG and the Trust would not adversely affect the financial operation of the Trust and SG.

177.

Had Plaintiffs known this information, the trust could have been instructed to liquidate the investments. As a result of the conflict of interest and foregoing breaches of fiduciary duty by Trust Defendants, Plaintiffs are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT TEN
UNFAIR TRADE PRACTICES

(La. Rev. Stat. § 51:1401, *et seq.*)

178.

Paragraphs 1 to 122 are incorporated herein by reference.

179.

Based upon the above allegations, Trust Defendants have violated the Louisiana Unfair Trade Practices Act, La. Rev. Stat. § 51:1401, *et seq.*

(the "Act"), and such actions constitute deceptive trade practices within the meaning of the Act.

180.

Accordingly, Plaintiffs are entitled to damages under the Act and are entitled to reasonable attorney fees, as provided for therein.

COUNT ELEVEN

VIOLATION OF THE LOUISIANA SECURITIES ACT

181.

Paragraphs 1 to 122 are incorporated herein by reference.

182.

This allegation is pled in the alternative, and only arises in the event that it is shown that the conduct of Trust Defendants was not negligent, but the representations made were not in good faith and were made with the reckless disregard for the truth.

183.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have violated the Louisiana Securities Law, La.R.S. 51:701, *et seq.* Trust Defendants have liability under the Louisiana Securities Law based upon Section 714(B).

184.

All Investment Advisor Defendants sold securities to Plaintiffs, within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Law. Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of

material facts, which made their statements misleading in the light of the circumstances in which they were made As a participant in the offering, and knowledge of the process, Trust Defendants made no attempt to determine the accuracy of the information that was being represented by Investment Advisor Defendants or to determine what information was omitted from the offering documents.

185.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Law.

186.

In addition, the Trust and the Trust Defendants participated in the sale of securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana Trust Defendants and Trust Company participated in the sale of securities to Plaintiffs who did not meet the non-public offering requirements who were not sophisticated investors.

187.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. Trust Defendants are liable based upon Section 714 (A) and (B) of the Louisiana Securities Law. Trust Defendants made no attempt to inquire whether the trust was assisting in the marketing of the unregistered securities which would have required SIB to disclose much more extensive information concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law.

188.

Plaintiffs relied on the foregoing material representations and/or omissions to their detriment.

189.

Trust Defendants participated, directly and indirectly, in the preparation, dissemination of written offering documents, promotional materials, investor and other correspondence, and oral presentations, in the solicitation of the Trust Accounts of the Plaintiffs which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

190.

Trust Defendants could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) of the Louisiana Securities Act.

191.

In accordance with Section 712(b) of the Louisiana Securities Act, every executive officer, or director of such person liable under 714(A)or every person occupying a similar status or performing similar functions, who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the

existence of the facts by reason of which liability is alleged to exist.

192.

Trust Defendants are executive officers and directors of the Trust Company which is a person liable under 712(A). Further, the Trust Defendants could have, in the exercise of reasonable care, determined the existence of the facts set forth in paragraphs 1 to 122 or in the alternative, determine the omission of certain facts that was making the offering of the SIB CD's misleading.

193.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs has sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT TWELVE
INSURANCE AND FIDELITY BOND COVERAGE

194.

Paragraphs 1 to 122 are incorporated herein by reference.

195.

The negligent actions and inactions of Trust Defendants and Investment Advisor Defendants constitute multiple occurrences under the policies of insurance and fidelity bond(s) issued by the Insurers.

196.

The policies of insurance issued by the policies of insurance and fidelity bond(s) issued by the Insurers

do not exclude damages caused by the actions and inactions of Trust Defendants and Investment Advisor Defendants.

197.

The actions and inactions of the Trust Defendants and Investment Advisor Defendants have caused damages during the policy terms of the policies of insurance issued by policies of insurance and fidelity bond(s) issued by the Insurers.

198.

As a result, Insurers are liable for all foreseeable and unforeseeable damages, direct or indirect, consequential, attorney's fees, loss of income, interest, or diminution in value caused by any of the Trust Defendants and Investment Advisor Defendants.

SEI (Count Thirteen)

COUNT THIRTEEN
VIOLATION OF THE LOUISIANA SECURITIES ACT

199.

Paragraphs 1 to 122 are incorporated herein by reference.

200.

Investment Advisor Defendants and Trust Defendants have violated the Louisiana Securities Law, La.R.S. 51:701, *et seq*. SEI has liability under the Louisiana Securities Law based upon Section 714(B).

201.

All Investment Advisor Defendants sold securities to Plaintiffs, within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Law Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of material facts, which made their statements misleading in the light of the circumstances in which they were made. As a participant in the offering, and knowledge of the process, SEI made no attempt to determine the accuracy of the information that was being represented by Investment Advisor Defendants or to determine what information was omitted from the offering documents.

202.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Law.

203.

In addition, the Trust and SEI participated in the sale of securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana. SEI and the Trust participated in the sale of securities to Plaintiffs who did not meet the non-public offering requirements who were not sophisticated investors.

204.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. SEI is liable based upon Section 714 (A) and (B) of the

Louisiana Securities Law. SEI made no attempt to inquire whether the trust was assisting in the marketing of the unregistered securities which would have required SIB to disclose much more extensive information concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law.

205.

Plaintiffs relied on the foregoing material representations and/or omissions to their detriment.

206.

SEI participated, directly and indirectly, in the preparation, dissemination of written offering documents, promotional materials, investor and other correspondence, and oral presentations, in the solicitation of the IRA accounts of the Plaintiffs which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

207.

SEI could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) of the Louisiana Securities Act.

208.

In accordance with Section 712(b) of the Louisiana Securities Act, every company who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person

liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist. Based upon the role of SEI, SEI participated in the offering in a material way based upon the allegations set forth herein and is jointly and severally liable.

209.

SEI could have, in the exercise of reasonable care, determined the existence of the facts set forth in paragraphs 1 to 122 or in the alternative, determine the omission of certain facts that was making the offering of the SIB CD's misleading.

210.

SEI, in the course of its business relationships with SG and the Trust, made material representations to Plaintiffs on a monthly and quarterly basis based upon the value of the SIB CD's. SEI and its employees and agents knowingly made the misrepresentations as to the value of the SIB CD's, and/or recklessly made the representations contained in said reports as positive assertions without any knowledge of their truth. Acting on behalf of SG and the Trust and at its behest, SEI created and transmitted monthly and quarterly reports to each Plaintiff with the intention that investors like Plaintiffs act upon the representations by investing in, or continuing to maintain investments in, SIB CD's. Plaintiffs received the reports created and transmitted by SEI and justifiably relied upon them and, based upon them and the information provided by SG and Trust,

formed the belief that the SIB CD's were legitimate investments and valued correctly. As a direct and proximate result of Plaintiffs' reliance on SEI's fraudulent misrepresentations, Plaintiff suffered damages, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

211.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs has sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter.

DAMAGES OWING BY DEFENDANTS

212.

Plaintiffs have suffered substantial financial injury as a direct, foreseeable and proximate result or Defendants breach of the duties, based upon the accounts alleged herein. In addition to the general damages flowing directly from these breaches, the Plaintiffs are entitled to recover consequential, incidental and special damages, lost profits, lost opportunities and other economic damages. Whereas almost all the Plaintiffs are older adults who are no longer gainfully employed, their prospects of replacing the retirement monies lost are virtually nonexistent, leaving Plaintiffs with substantially reduced means for their continued sustenance. Thus, as a consequential and proximate result of their financial injuries, Plaintiffs have experienced, and continue to experience, severe emotional distress in the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, and are entitled to recover for such non-economic

consequential damages, according to proof at trial. Additionally, Plaintiffs' emotional distress has caused and is continuing to cause them to suffer additional financial losses as well, according to proof at trial.

213.

Plaintiffs have suffered substantial financial injury as a direct, foreseeable and proximate result of the contractual breaches, as alleged herein In addition to the general damages flowing directly from these breaches, the Plaintiffs are entitled to recover consequential, incidental and special damages, lost profits, lost opportunities, and other economic damages.

JURY DEMAND

214.

Plaintiffs demand trial by jury of all issues so triable

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray for the following:

A. that Defendants be cited to appear and answer;

B. that, upon trial on the merits, Plaintiffs recover actual damages;

C. that, upon trial on the merits, Plaintiffs recover attorneys' fees, prejudgment interest, post judgment interest, costs of court, and such other and further relief to which Plaintiffs may be justly entitled; and

D. for all other equitable and legal relief as provided by law.

Respectfully Submitted,

PREIS GORDON, APLC

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* * *

APPENDIX H

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

[FARR v. GREEN]
[full caption omitted]

* * *

DEFENDANT GRADY LAYFIELD, HANK MILLS AND JOHN SCHWAB'S NOTICE OF REMOVAL

Defendants Grady Layfield, Hank Mills and John Schwab ("Removing Defendants") hereby remove to this Court the state-court action described below pursuant to the Court's federal subject matter jurisdiction.

INTRODUCTION

On or about August 14, 2009, Plaintiffs commenced this action.

1. This action was filed in the 19th Judicial District Court for the Parish of East Baton Rouge, entitled *LEAH FARR, TROY LILLIE, KENNETH DOUGHERTY, CHARLES WHITE, MARTHA JEAN WHITMER, SHARON WHITMER, OLIVIA SUE WARNOCK, CLYDE J. CHISHOLM, RONALD McMORRIS, ARTHUR ORDOYNE, WILLIAM DAWSON, TERRY TULLIS, JAMES STEGALL, ANTHONY VENTRELLA, ROBERT SMITH, THOMAS SLAUGHTER, LARRY PERKINS, WILLIAM PHILLIPS, CHARLES HART, RICHARD FEUCHT, LONNIE ORDOYNE, ARTHUR WAXLEY, DARRELL COURVILLE, MERRILL LAPLANTE, JAMES BROWN, IRA CAUSEY; JERRY BURRIS, JACQUELINE MILLET, LOUIS*

MIER, MAMIE BAUMANN, CHARLES SANCHEZ, JOSEPH CHUSTZ, JR., ROBERT BUSH, BOBBY NIX, CLAUDE MARQUETTE, GWEN FABRE, ROBERT SCHWENDIMANIN, WANDA BEVIS, TERRY TARVER, MARCEL DUMESTRE, RONALD VALENTINE, BENNIE O'REAR, JULIE SAVOY, LAURA LEE, DENNIS KIRBY, BILLIE RUTH McMORRIS, LARRY SMITH, KENNETH WILKEWITZ, MURPHY BUELL, KERRY KING, LYNN GILDERSLEEVE, MICHELLI, WILLA MAE GILDERSLEEVE, ANITA ELLEN CARTER, FRED DEMAREST, NANCY GILL, LINDA BOYD, VIRGINIA BUSCHEME, ROBERT GILDERSLEEVE, WALTER STONE, VIRGINIA McMORRIS, CAROL STEGALL, GARY MAGEE, MONTY PERKINS, JOAN FEUCHT, KATHLEEN MIER, MAMIE SANCHEZ, MARGARET S. NIX, MARGARET DUMESTRE, CLAUDIA O'REAR, GORDON C. GILL, JOHN BUSCHEME, AND CHARLES MASSEY versus JASON GREEN, GRADY LAYFIELD, HANK MILLS, DIRK HARRIS, TIMOTHY E. PARSONS, CHARLES JANTZI, TIFFANY ANGELLE, JAMES FONTENOT, ALVARO TRULLENQUE, GARY HAINDELL, JOHN SCHWAB, MICHAEL WORD, JAMES KEITH COX, CHARLES RAWL, ARLEN "TIGER" BLACKWELL, JAY COMEAUX, RON CLAYTON, ZACK PARRISH, BERNARD YOUNG, LENA STINSON, JAY COMEAUX, RHONDA LEAR, JACK BRUNO, JD. PERRY, JOE KLINGEN, RUSS NEWTON, DANNY BOGAR, JIM WELLER, JOHN DOES 1-10, STANFORD TRUST COMPANY, SEI INVESTMENTS COMPANY, CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON IN SYNDICATES 2987, 1866, 1084, 1274, 4000 & 1183, XYZ INSURANCE COMPANY, ABC BOND

COMPANY and RST INSURANCE COMPANY under cause number 581480 Sec. 26. ("Petition").

2. Among others, the Petition names as defendants Grady Layfield, Hank Mills and John Schwab. It also names several other individual defendants as well as Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183, alleged to be insurers that issued errors and omissions liability policies and directors and officers liability policies covering the Individual Defendants.

3. Removing Defendants have attached a copy of all process, pleadings, and orders filed in the state court. (*See* Exhibit A.) No defendants have been served. Thus, this Notice of Removal is timely and in compliance with 28 U.S.C. § 1446(b).[1]

4. Consent of other named defendants is not required because they have not yet been served with service of process. A defendant may remove without consent of a defendant who has not been served. *See Roe v. O'Donohue*, 38 F.3d 298, 301 (7th Cir. 1994). Additionally, consent is not required of nominal defendants. *See id.* at 301.

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[1] Service of process is not an prerequisite to removal Section 1446(b) expressly provides for removal of a civil action or proceeding within thirty days after the receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, or order or other paper from which it may first be ascertained that the case is one which is or has become removable. *See Delgado v. Shell Oil Co.*, 231 F. 3d 165, 177 (5th Cir. 2000). *"We read § 1446(b) and its 'through service or otherwise' language as consciously reflecting a desire on the part of Congress to require that an action be commenced against a defendant before removal, but not that the defendant have been served." See id.*

5. Venue is proper in the U.S. District Court for the Middle District of Louisiana under 28 U.S.C. §1446(a) because the case is being removed from Louisiana State Judicial District Court for the Parish of East Baton Rouge.

6. Removing Defendants removes the state court action pursuant to the Court's federal subject matter jurisdiction and would show the following in support:

BACKGROUND

7. On August 14, 2009 Plaintiffs filed their Petition in the 19th Judicial District Court for the Parish of East Baton Rouge. Plaintiffs' Petition alleges the Individual Defendants were Plaintiffs' investment advisors and that – as employees and investment advisors of and for the Stanford Group Company and Stanford Capital Management – they made negligent misrepresentations to Plaintiffs regarding a host of wrongdoing by Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management (the "Stanford Group Companies"). Plaintiffs claim, as well, that the Individual Defendants breached fiduciary duties and violated Louisiana's Securities Law.

8. Earlier this year, the Securities and Exchange Commission ("SEC") filed a Complaint against the Stanford Group Companies, R. Allen Stanford, James M. Davis, and Laura Pendergest-Holt in the U.S. District Court for the Northern District of Texas, styled *Securities and Exchange Commission v. Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, R. Allen Stanford, James M. Davis, and Laztra Pendergest-Holt*, No. 3-09CV0298-L (the "SEC Complaint, attached as Exhibit B).

9. The SEC Complaint asserts that the defendants named therein engaged in "a massive, ongoing fraud" – specifically, that Stanford International Bank ("SIB"), acting "through a network of [Stanford Group Company] financial advisors, has sold approximately $8 billion of self-styled 'certificates of deposit' by promising high return rates that exceed those available through true certificates of deposits offered by traditional banks." (the "SEC Complaint, attached as Exhibit B ¶¶ 1-2). The Complaint states that "SIB and its advisers have misrepresented to CD purchasers that their deposits are safe because the bank: (i) re-invests client funds primarily in 'liquid' financial instruments...; (ii) monitors the portfolio through a team of 20-plus analysts; and (iii) is subject to yearly audits by Antiguan regulators." (*Id.* ¶ 8.) The SEC claims the defendants, as a result of these acts, committed a host of federal securities violations, including violations of § 10(b) of the Securities Exchange Act of 1934 and Rule 10-b5 promulgated thereunder, Section 17(a) of the Securities Act of 1933, Sections 206(1) and 206(2) of the Advisers Act, and Section 7(d) of the Investment Company Act. (*Id.* ¶ 13.)

10. The same day, the SEC – citing as authority Sections 20(b) and 20(d) of the Securities Act of 1933, Sections 21(d) and 21(e) of the Securities Exchange Act of 1934, Sections 41(d) and 41(e) of the Investment Company Act of 1940, and Sections 209(d) and 209(e) of the Investment Advisers Act of 1940 – applied for a temporary restraining order and orders freezing assets, requiring an accounting, requiring preservation of documents, and

authorizing expedited discovery. (Exhibit C, introductory paragraph and ¶ 11.)

11. The Dallas court granted the SEC's request and also issued an Order Appointing Receiver (the "Order"). In that Order, the court assumed "exclusive jurisdiction" over the matter and took "possession of the assets...of whatever kind and description, wherever located ... of the Defendants[.]" (Order, attached as Exhibit D, ¶ 1.)

12. The Order is far-reaching and gives the receiver broad powers. For example, the Order authorized the receiver to "immediately take and have complete and exclusive control ... of the Receivership Estate [defined as all assets the defendants owned or controlled and all documents the defendants possessed or that were in the possession of any agent or employee of the defendants] and to any assets traceable to assets owned by the Receivership Estate," (*Id.* 4.) Further, the Dallas court ordered that the "officers, agents and employees" of the Stanford Group Companies preserve and retain all of their documents, (*Id.* ¶ 13.).

13. The Order also enjoins civil actions such as Plaintiffs':

> Creditors and all other persons are hereby restrained and enjoined from the following actions, except in this Court, unless this Court, consistent with general equitable principals and in accordance with its ancillary equitable jurisdiction in this matter, orders that such actions may be conducted in another forum or jurisdiction:

> (a) ***The commencement or continuation***, including the issuance or employment of process, ***of any judicial, administrative, or other proceedings against*** the Receiver, any of the defendants, the Receivership Estate, or ***any*** agent, officer, or ***employee related to the Receivership Estate, arising from the subject matter of this civil action***. [*Id.* ¶¶ 7(a), emphasis added.]

Similarly, the Order enjoins creditors "and all other persons" from taking either "[a]ny act to obtain possession of the Receivership Estate assets" or "[a]ny act to collect, assess, or recover a claim — that would attach to or encumber the Receivership Estate," without prior court approval. (*Id.* ¶ 8(c).) Plaintiffs likely knew of the Dallas court's injunction and Order. Moreover, many of Plaintiffs' allegations mirror the allegations the SEC first asserted against the Stanford Group Companies in the Dallas action.[2]

16. Plaintiffs do not allege they received prior approval from the Dallas court to proceed with this action.

FEDERAL QUESTION JURISDICTION EXISTS IN THIS CASE

17. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1367, and 28 U.S.C. § 1441 because this case presents a

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[2] The district court entered an Amended Order Appointing Receiver on March 12, 2009. The Amended Order is identical to the original Order as to the matters cited herein.

substantial federal question – namely, the suit challenges whether the Dallas court has ***authority*** to enjoin this action under the federal securities law, federal common law, or, simply, under the court's "ancillary equitable jurisdiction" such that Plaintiffs' action may not proceed. (Order ¶ 7(a). attached as Ex. D).

18. Plaintiffs' suit in its prayer for civil money damages is also "related to the Receivership Estate [and] aris[es] from the subject matter of the Dallas action. (*Id.*) As such, this action is precisely the type of suit the Dallas court has attempted to enjoin through its Order. Plaintiffs' attempt to prosecute this action thus constitutes a ***direct challenge*** to the Order given the Dallas court's injunction of suits against "employees" of the Stanford Group Companies.

19. In addressing this suit, therefore, a court necessarily must determine whether the action may proceed or whether the Dallas court's Order prevents the suit from going forward. In making this determination, a court must consider the Dallas court's authority to enjoin this action, which is undoubtedly a federal question: Specifically, the Court must determine the scope of the Dallas court's authority to enjoin civil actions under Sections 20(b) and 20(d) of the Securities Act of 1933, Sections 21(d) and 21(e) of the Securities Exchange Act of 1934, Sections 41(d) and 41(e) of the Investment Company Act of 1940, and Sections 209(d) and 209(e) of the Investment Advisers Act of 1940, federal common law, and the court's "inherent equitable jurisdiction." The issue bears directly on federal law – the federal securities laws (to which a federal court has ***exclusive*** jurisdiction insofar as an action under

the 1934 Securities Exchange Act is presented), federal common law, and a federal court's equitable jurisdiction.

20. Case law reveals instances where a federal injunction or stay purports to preclude state-court actions. Courts in these situations analyze federal law to decide whether a competing state-court action may proceed in the face of a federal injunction. Here, this Court must analyze the breadth of federal securities law, federal common law, and/or a federal court's equitable jurisdiction – or, possibly, all of them – to decide whether this action may proceed. The core of this case – indeed, whether this action may exist at all – presents a substantial federal question and, therefore, falls under the Court's federal subject matter jurisdiction. *See Carpenter v. Wichita Falls Indep. Sch. Dist.*, 44 F.3d 362, 366 (5th Cir. 1995) (explaining that, if "the state court necessarily must look to federal law in passing on the claim, the case is removable regardless of what is in the pleading"); *U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 389 (3d Cir. 2002) ("The state suit need not invoke a federal law in order to 'arise under' it for removal purposes. It is sufficient that the merits of the litigation turn on a substantial federal issue that is 'an element, and an essential one, of the plaintiffs cause of action.'"); *T B. Harms Co. v Eliscu*, 339 F.2d 823, 827 (2d Cir. 1964) ("Even though the claim is created by state law, a case may 'arise under' a law of the United States if the complaint discloses a need for determining the meaning or application of such a law."), *cert. denied*, 381 U.S. 915.

WHEREFORE, Grady Layfield, Hank Mills and John Schwab respectfully request that this Court assume full jurisdiction over the cause herein as provided by law.

Respectfully submitted,

*/s/*_____
Donna Garbarino Schwab
Bar Roll # 5917
Attorney at Law
2446 June Street
Baton Rouge, LA 70808
Telephone : (225)936-6452
Fax : (225) 387-1714
Attorney for Grady Layfield, Hank Mills and John Schwab

* * *

EXHIBIT
A

[FARR v. GREEN]
[full caption omitted]

* * *

PLAINTIFF'S ORIGINAL PETITION (IRA)

NOW INTO COURT, through undersigned counsel comes Plaintiffs, LEAH FARR, TROY LILLIE, KENNETH DOUGHERTY, CHARLES WHITE, MARTHA JEAN WITMER, SHARON WITMER, OLIVIA SUE WARNOCK, CLYDE J. CHISHOLM, RONALD McMORRIS, ARTHUR ORDOYNE, WILLIAM DAWSON, TERRY TULLIS, JAMES STEGALL, ANTHONY VENTRELLA, ROBERT SMITH, THOMAS SLAUGHTER, LARRY PERKINS, WILLIAM PHILLIPS, CHARLES HART, RICHARD FEUCHT, LONNIE ORDOYNE, ARTHUR WAXLEY, DARRELL COURVILLE, MERRILL LAPLANTE, JAMES BROWN, IRA CAUSEY, JERRY BURRIS, JACQUELINE MILLET, LOUIS MIER, MAMIE BAUMANN, CHARLES SANCHEZ, JOSEPH CHUSTZ, JR., ROBERT BUSH, BOBBY NIX, CLAUDE MARQUETTE, GWEN FABRE, ROBERT SCHWENDIMANN, WANDA BEVIS, TERRY TARVER, MARCEL DUMESTRE, RONALD VALENTINE, BENNIE O'REAR, JULIE SAVOY, LAURA LEE, DENNIS KIRBY, BILLIE RUTH McMORRIS, LARRY SMITH, KENNETH WILKEWITZ, MURPHY BUELL, KERRY KLING, LYNN GILDERSLEEVE MICHELLI, WILLA MAE

GILDERSLEEVE, ANITA ELLEN CARTER, FRED DEMAREST, NANCY GILL, LINDA BOYD, VIRGINIA BUSCHEME, ROBERT GILDERSLEEVE, WALTER STONE, VIRGINIA McMORRIS, CAROL STEGALL, MONTY PERKINS, JOAN FEUCHT, KATHLEEN MIER, MAMIE SANCHEZ, MARGARET S NIX, MARGARET DUMESTRE, CLAUDIA O'REAR, GORDON C. GILL, JOHN BUSCHEME, and CHARLES MASSEY (collectively referred to herein as "Plaintiffs"), who for their petition against the Investment Advisor Defendants named below (collectively referred to herein as "Investment Advisor Defendants"), the IRA Defendants named below (collectively referred to herein as "IRA Defendants"), SEI INVESTMENTS COMPANY ("SEI"), and the Insurers named below (collectively referred to herein as "Insurers") (IRA Defendants, Investment Advisor Defendants, SEI and Insurers are collectively referred to as "Defendants") respectfully represent as follows:

PARTIES

1.

Plaintiffs in this case, appearing individually and on behalf of their individual retirement accounts, are as follows:

A. **LEAH FARR**, a person of the full age of majority residing at 3040 MADERIA DRIVE, BATON ROUGE, LA 70810 (" Farr");

B. **TROY LILLIE**, a person of the full age of majority residing at 9619 BELLE PLACE CIRCLE, MAURICE, LA 70555 (" Lillie");

C. **KENNETH DOUGHERTY**, a person of the full age of majority residing at 13821 BLACKWATER ROAD, BAKER, LA 70714 (" Dougherty");

D. **CHARLES WHITE**, a person of the full age of majority residing at 12847 BECKY DRIVE, WALKER, LA 70785 ("White");

E. **MARTHA JEAN WITMER**, a person of the full age of majority residing at 5008 SUMMA COURT, BATON ROUGE, LA 70809 ("Witmer");

F. **SHARON WITMER**, a person of the full age of majority residing at 530 SHADY LAKE PKWY, BATON ROUGE, LA 70810 ("Witmer");

G. **OLIVIA SUE WARNOCK**, a person of the full age of majority residing at 16420 BATAVIA, BATON ROUGE, LA 70817 ("Warnock");

H. **CLYDE J. CHISHOLM**, a person of the full age of majority residing at 1937 WEST MAGNA CARTA PLACE, BATON ROUGE, LA 70815 ("Chisholm);

I. **RONALD McMORRIS**, a person of the full age of majority residing at 7456 O'GUNNER LANE, ETHEL, LA 70730 ("McMorris");

J. **ARTHUR ORDOYNE**, a person of the full age of majority residing at 25831 ROYAL TROON, DENHAM SPRINGS, LA 70726 ("Ordoyne");

K. **WILLIAM DAWSON**, a person of the full age of majority residing at 40174 DOVE ESTATES, GONZALES, LA ("Dawson");

L. **TERRY TULLIS**, a person of the full age of majority residing at 5924 LANDMOR DRIVE, GREENWELL SPRINGS, LA 70739 ("Tullis");

M. **JAMES STEGALL**, a person of the full age of majority residing at 10843 RAMBLEWOOD DRIVE, BATON ROUGE, LA 70810 ("Stegall");

N. **ANTHONY VENTRELLA**, a person of the full age of majority residing at 15330 ASHVILLE AVENUE, PRIDE, LA 70770 ("Ventrella");

O. **ROBERT SMITH**, a person of the full age of majority residing at 6140 TEZCUCO COURT, GONZALES, LA 70737 ("Smith");

P. **THOMAS SLAUGHTER**, a person of the full age of majority residing at 3559 HANCOCK STREET, ZACHARY, LA 70791 ("Slaughter");

Q. **LARRY PERKINS**, a person of the full age of majority residing at 21973 W J WICKER ROAD, ZACHARY, LA 70791 ("Perkins");

R. **WILLIAM PHILLIPS**, a person of the full age of majority residing at P.O. BOX 3, ZACHARY, LA 70791-0003 ("Phillips");

S. **CHARLES HART**, a person of the full age of majority residing at 126 MALLARD LANDING, FERRIDAY, LA 71334 ("Hart");

T. **RICHARD FEUCHT**, a person of the full age of majority residing at 7907 DENHAM CHASE, DENHAM SPRINGS, LA 70726 ("Feucht");

U. **LONNIE ORDOYNE**, a person of the full age of majority residing at 515 HIGHWAY 20, THIBODAUX, LA 70301 ("Ordoyne");

V. **ARTHUR WAXLEY**, a person of the full age of majority residing at 15884 EL RANCHITOS AVENUE, PRIDE, LA 70770 ("Waxley");

W. **DARRELL COURVILLE**, a person of the full age of majority residing at 12553 PLEASANT RIDGE, WALKER, LA 70785 ("Courville");

X. **MERRILL LAPLANTE**, a person of the full age of majority residing at 339 DELGADO DRIVE, BATON ROUGE, LA 70808 ("Laplante");

Y. **JAMES BROWN**, a person of the full age of majority residing at 3024 MEADOWOOD DRIVE, BATON ROUGE, LA 70777 ("Brown");

Z.**IRA CAUSEY**, a person of the full age of majority residing at 23535 SUNNYSIDE LANE, ZACHARY, LA 70719 ("Causey");

AA. **JERRY BURRIS**, a person of the full age of majority residing at 7851 LAZY OAKS CIRCLE, DENHAM SPRINGS, LA 70726 ("Burris");

BB. **JACQUELINE MILLET**, a person of the full age of majority residing at 7851 LAZY OAKS CIRCLE, DENHAM SPRINGS, LA 70726 ("Millet");

CC. **LOUIS MIER**, a person of the full age of majority residing at 8813 EAST VERNON ROAD, ZACHARY, LA 70791 ("Mier");

DD. **MAMIE BAUMANN**, a person of the full age of majority residing at 4580 DRUSILLA DRIVE, BATON ROUGE, LA 70809 ("Baumann");

EE. **CHARLES SANCHEZ**, a person of the full age of majority residing at 4580 DRUSILLA DRIVE, BATON ROUGE, LA 70809 ("Sanchez");

FF. **JOSEPH CHUSTZ, JR.**, a person of the full age of majority residing at 14333 ELISE CATHERINE, BATON ROUGE, LA 70737 ("Chustz");

GG. **ROBERT BUSH**, a person of the full age of majority residing at 606 SANDRA DRIVE, BAKER, LA 70714 ("Bush");

HH. **BOBBY NIX**, a person of the full age of majority residing at 82 N HILL DRIVE W6, CARRIERE, MS 39426 ("Nix");

II. **CLAUDE MARQUETTE**, a person of the full age of majority residing at 1915 CAMELLIA TRACE DRIVE, BATON ROUGE, LA 70808 ("Marquette");

JJ. **GWEN FABRE**, a person of the full age of majority residing at 7800 COOKS LANDING DRIVE, VENTRESS, LA 70783 ("Fabre");

KK. **ROBERT SCHWENDIMANN**, a person of the full age of majority residing at 7246 ANGUS AVENUE, ZACHARY, LA 70791 ("Schwendimann");

LL. **WANDA BEVIS**, a person of the full age of majority residing at 2209 EAST EAGLE STREET, ZACHARY, LA 70791 ("Bevis");

MM. **TERRY TARVER**, a person of the full age of majority residing at PO BOX 222, CLINTON, LA 70722 ("Tarver");

NN. **MARCEL DUMESTRE**, a person of the full age of majority residing at 19844 WEST 56TH PLACE, GOLDEN, COLORADO 80403 ("Dumestre");

OO. **RONALD VALENTINE**, a person of the full age of majority residing at 1530 BIRDIE DRIVE, ZACHARY, LA 70791 ("Valentine");

PP. **BENNIE O'REAR**, a person of the full age of majority residing at 2416 ST REGIS DRIVE, BATON ROUGE, LA 70816 ("O'Rear");

QQ. **JULIE SAVOY**, a person of the full age of majority residing at 45349 STRINGER BRIDGE, ST. AMANT, LA 70774 ("Savoy");

RR. **LAURA LEE**, a person of the full age of majority residing at 620 SOUTH MAGEN, FAIR GROVE, MO 65648 ("Lee");

SS. **DENNIS KIRBY**, a person of the full age of majority residing at 23142 ELBERTA LANE, ZACHARY, LA 70791 ("Kirby");

TT. **BILLIE RUTH McMORRIS**, a person of the full age of majority residing at 4747 NEWELL STREET, ZACHARY, LA 70791 ("McMorris");

UU. **LARRY SMITH**, a person of the full age of majority residing at 920 EAST TOM STOKES COURT, BATON ROUGE, LA 70810 ("Smith");

VV. **KENNETH WILKEWITZ**, a person of the full age of majority residing at 13680 MILLDALE ROAD, ZACHARY, LA 70791-1324 ("Wilkewitz");

WW. **MURPHY BUELL**, a person of the full age of majority residing at 23525 SUNNYSIDE, ZACHARY, LA 70791 ("Buell");

XX. **KERRY KLING**, a person of the full age of majority residing at 5773 LAUREL HILL LANE, ST. FRANCISVILLE, LA 70775 ("Kling");

YY. **LYNN GILDERSLEEVE MICHELLI**, a person of the full age of majority residing at 2337 MYRTLE AVENUE, BATON ROUGE, LA 70806 ("Michelli;

ZZ. **WILLA MAE GILDERSLEEVE**, a person of the full age of majority residing at 2337 MYRTLE AVENUE, BATON ROUGE, LA 70806 ("Gildersleeve");

AAA. **ANITA ELLEN CARTER**, a person of the full age of majority residing at 3800 PLACID LANE, LAKE CHARLES, LA 70605 ("Carter");

BBB. **FRED DEMAREST**, a person of the full age of majority residing at 5822 LAKE SHADOW DRIVE, BATON ROUGE, LA 70817 ("Demarest");

CCC. **NANCY GILL**, a person of the full age of majority residing at 2234 ROBINHOOD, HOUSTON, TEXAS 77005 ("Gill");

DDD. **LINDA BOYD**, a person of the full age of majority residing at 3213 ST. ANN, ZACHARY, LA 70791 ("Boyd");

EEE. **VIRGINIA BUSCHEME**, a person of the full age of majority residing at 3510 MENTANA PLACE, SAN ANTONIO, TEXAS 78258 ("Buscheme");

FFF. **ROBERT GILDERSLEEVE**, a person of the full age of majority residing at 3123 TIDAL BAY LANE, VIRGINIA BEACH, VIRGINIA 23451 ("Gildersleeve");

GGG. **WALTER STONE**, a person of the full age of majority residing at 530 SHADY LAKE PKWY, BATON ROUGE, LA 70810 ("Stone");

HHH. **VIRGINIA McMORRIS**, a person of the full age of majority residing at 7456 O'GUNNER LANE, ETHEL, LA 70730 ("McMorris");

III. **CAROL STEGALL**, a person of the full age of majority residing at 10843 RAMBLEWOOD DRIVE, BATON ROUGE, LA 70810 ("Stegall");

JJJ. **MONTY PERKINS**, a person of the full age of majority residing at 21973 W J WICKER ROAD, ZACHARY, LA 70791 ("Perkins");

KKK. **JOAN FEUCHT**, a person of the full age of majority residing at 7907 DENHAM CHASE, DENHAM SPRINGS, LA 70726 ("Feucht");

LLL. **KATHLEEN MIER**, a person of the full age of majority residing at 8813 EAST VERNON ROAD, ZACHARY, LA 70791 ("Mier");

MMM. **MAMIE SANCHEZ**, a person of the full age of majority residing at 4580 DRUSILLA DRIVE, BATON ROUGE, LA 70809 ("Sanchez");

NNN. **MARGARET S. NIX**, a person of the full age of majority residing at 82 N HILL DRIVE W , CARRIERE, MS 39426 ("Nix");

OOO. **MARGARET DUMESTRE**, a person of the full age of majority residing at 19844 WEST 56TH PLACE, GOLDEN, COLORADO 80403 ("Dumestre");

PPP. **CLAUDIA O'REAR**, a person of the full age of majority residing at 2416 ST REGIS DRIVE, BATON ROUGE, LA 70816 ("O'Rear");

QQQ. **GORDON C. GILL**, a person of the MI age of majority residing at 2234 ROBINHOOD, HOUSTON, TEXAS 77005 ("Gill");

RRR. **JOHN BUSCHEME**, a person of the full age of majority residing at 3510 MENTANA PLACE, SAN ANTONIO, TEXAS 78258 ("Buscheme");

SSS. **CHARLES MASSEY**, a person of the full age of majority residing at 3460 PIPER ROAD, SLAUGHTER, LA 70777 ("Massey"); and

TTT. **GARY MAGEE**, a person of the full age of majority residing in 8134 Cypress Lake Drive, Baton Rouge, Louisiana 70809 The persons identified

herein in items A-x are collectively referred to herein as the "Plaintiffs".

2.

The Investment Advisor Defendants are all persons who sold Plaintiffs the SIB certificates of deposits along with Jason Green and Jay Comeaux, who were officers of Stanford Financial Group Made Investment Advisor Defendants herein are the following parties:

A. **JASON GREEN**, a person of the full age of majority residing at 19231 S Lakeway Avenue, Baton Rouge, Louisiana 70810 ("Green");

B. **GRADY LAYFIELD**, a person of the full age of majority residing at 18772 Amen Corner Ct , Baton Rouge, Louisiana 70810 ("Layfield");

C. **JAY COMEAUX**, a person of the full age of majority residing at 2211 Augusta #18, Houston, Texas 77057 ("Comeaux");

D. **HANK MILLS**, a person of the full age of majority residing at 2623 Kleinert Avenue, Baton Rouge, Louisiana 70806 ("Mills");

E. **DIRK HARRIS**, a person of the full age of majority residing at 10151 Hillmant (Avenue, Baton Rouge, Louisiana 70810 ("Harris");

H. **TIMOTHY E. PARSONS**, a person of the full age of majority residing at 10533 Oakley Trace, Baton Rouge, Louisiana 70809 ("Parsons");

I. **CHARLES JANTZI**, a person of the full age of majority residing at 723 Troutbeck, Baton Rouge, Louisiana 70810 ("Jantzi");

J. **TIFFANY ANGELLE**, a person of the full age of majority residing at 403 Boulder Creek Parkway, Lafayette, Louisiana 70508 ("Angelle");

K. **JAMES FONTENOT**, a person of the full age of majority residing at 9902 Hillon Hood Road, Denham Springs, Louisiana 70726 ("Fontenot");

L. **ALVARO TRULLENQUE**, a person of the full age of majority residing at 5118 West Oak Mews, Houston, Texas 77056 ("Trullenque");

M. **JOHN SCHWAB**, a person of the full age of majority residing at 2446 June Street, Baton Rouge, LA, 70808 ("Schwab");

N. **JAMES KEITH COX**, a person of the full age of majority residing at 10730 N Great Oak Court, Baton Rouge, LA 70810 ("Cox");

O. **MICHAEL WORD**, a person of the full age of majority residing at 2404 St ANDREWS AVE, ZACHARY, LA 70791 ("Word");

P. **CHARLES RAWL**, a person of the full age of majority currently residing in HOUSTON, TEXAS, and who may be served through the Louisiana Long Arm Statute at 1800 St. James Place, Suite 212, Houston, Texas 77056 ("Rawl");

Q. **ARLEN "TIGER" BLACKWELL**, a person of the full age of majority residing at 11451 MOSS SIDE DRIVE, GONZALES, LA 70737, ("Blackwell");

R. **RON CLAYTON**, a person of the full age of majority residing at 1962 STUART AVENUE, BATON ROUGE, LA 70808, ("Clayton"); and

S. **GARY HAINDEL**, a person of the full age of majority residing at 3106 McCLENDON COURT, BATON ROUGE, L A 70810 ("Haindel").

3.

The IRA Defendants are all Officers and Directors of the Stanford Trust Company Made IRA Defendants herein are the following parties:

A. **STANFORD TRUST COMPANY**, a trust company organized and existing under the laws of the state of Louisiana, which can be served through its registered agent for service of process, Zack S. Parrish, 445 North Blvd , 8th Floor, 70802-5709;

B. **ZACK PARRISH**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 1434 Chimney Rock Rd , Houston, Texas 77056;

C. **BERNARD YOUNG**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

D. **LENA STINSON**, a person of full age of majority, who may be served via Louisiana Long Ann Statute at 3118 Heathglen Road, Montgomery, Texas 77356;

E. **JAY COMEAUX**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 2211 Augusta #18, Houston, Texas 77057;

F. **RHONDA LEAR**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 3030 Dunvale Road, Houston, Texas 77063;

G. **JACK BRUNO**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

H. **J. D. PERRY**, a person of full age of majority, who may be served at 10139 Glen Arbor Ave., Baton Rouge, Louisiana 70809;

I. **JOE KLINGEN**, a person of full age of majority, who may be served via Louisiana Long Arm Statute at 12607 Rocky Meadow Drive, Houston, Texas 77024;

J. **RUSS NEWTON**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

K. **DANNY BOGAR**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time;

L. **JIM WELLER**, a person of full age of majority and former employee of Stanford, whose address is unknown at this time; and

M. **JOHN DOES 1-10**, which are all other officers and directors of the Stanford Trust Company during the time period in which the Trust purchased SIB CD's on behalf of the Plaintiffs.

4.

Further made defendant herein is **SEI INVESTMENTS COMPANY**, a foreign corporation registered to do and actually doing business in the state of Louisiana, which may be served through via the Louisiana Long Arm Statute at its registered office at 1 Freedom Valley Road, Oaks, Pennsylvania 19456 ("SEI").

5.

The Insurers provided insurance coverage for the damages resulting from the acts, inactions, omissions and errors of the IRA Defendants and

Investment Advisor Defendants. The Insurers made defendant herein are the following parties:

A. **CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON IN SYNDICATES 2987, 1866, 1084, 1274, 4000 & 1183**. These Defendants are citizens of the United Kingdom and provide policies of errors and omissions liability insurance and directors and officers liability insurance to the Investment Advisor Defendants and IRA Defendants. Per the service of suit clause in the policies of insurance, this Defendant may be served with the petition and citation by serving Mendes & Mount, 750 Seventh Avenue, New York, NY 10019-6829.

B. **ABC BOND COMPANY**, the bond company which provides fidelity bonds to cover the actions of the Investment Advisor Defendants and IRA Defendants; and

C. **RST INSURANCE COMPANIES**, the insurance companies which provides policies of comprehensive general liability insurance to each Investment Advisor Defendant and IRA Defendants.

SUMMARY OF ALLEGATIONS

6.

The Plaintiffs in this case are mostly retirees of Exxon and IRA account holders that invested substantially all of their life savings with the Stanford Group and Stanford Trust (the "Trust"). Many of the investors lost their entire life savings, held in individual retirement accounts ("IRAs"). These funds were amassed by sacrificing and cautiously saving throughout the course of their working lives. The losses at issue are not the simple

result of the failure of legitimate investments to perform as expected; rather, this a loss which could have been perpetrated had the Investment Advisors, Trust, SEI and IRA Defendants not breached fiduciary, statutory and contractual duties owed to its customers. The actions and inaction of IRA Defendants, SEI and Investment Advisor Defendants provided substantial assistance to the scheme, which devastated the Plaintiffs and their families.

7.

Plaintiffs have suffered substantial financial injury as a result of Defendants' conduct, as alleged herein. Whereas a substantial number of all of the Plaintiffs are older adults who are no longer gainfully employed, their prospects of replacing the retirement monies lost are virtually nonexistent—leaving Plaintiffs with substantially reduced means for their continued sustenance. Thus, as a consequential and proximate result of their financial injuries, Plaintiffs have experienced, and continue to experience, severe emotional distress in the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, according to proof at trial. Plaintiffs' emotional distress has caused and is continuing to cause them to suffer additional financial losses as well, according to proof at trial.

8.

Investment Advisor Defendants were employees and investment advisors of and for the Stanford Group Company and Stanford Capital Management. Investment Advisor Defendants, as investment advisors to the Plaintiffs, recommended that Plaintiffs' retirement funds be rolled over from the

retirement plans of the company where each of the Plaintiffs had worked most of their careers and that Stanford Trust be designated as the custodian of the IRA for the sole purpose of providing a conduit to the purchase and/or renewal of certificates of deposit from Stanford International Bank, Ltd. (the "SIB CD's"). In the case of employees of Exxon, the Trust targeted this group as a primary source of business and developed a business plan of indentifying persons retiring within two years of their retirement date, soliciting these individuals over an extended period of time to roll over their life retirement accounts into the Trust, and then authorizing the Trust to invest in the SIB CD's based upon the recommendations of the Investment Advisor Defendants. In other instances, the SIB CD's were purchased in the Plaintiffs' individual names.

9.

All Investment Advisor Defendants repotted to and were supervised by Jason Green, who was located in Baton Rouge, Louisiana, and Jay Comeaux, who was located in Houston, Texas. Investment Advisor Defendants received above market commissions on the sale of the SIB CD's to Plaintiffs and the Plaintiffs'. IRAs Green and Comeaux received part of the commission from the sale of all SIB CD's by all Investment Advisor Defendants reporting to each of them. Because of the marketing plan and commission structure, investment Advisor Defendants failed to inquire about material facts and risks of the SIB CD's that the Investment Advisor Defendants should have known and understood as investment advisors representing Plaintiffs and failed to inform Plaintiffs of these material facts and risks. Investment

Advisor Defendants called the debt instruments sold to Plaintiffs "certificates of deposit" and referred to the issuing entity as a "bank". In truth and in fact, the "bank" was a speculative highly leveraged hedge fund and the so-called "certificates of deposit" were nothing more than a high-risk ultra speculative mezzanine type debt junk bond. Investment Advisor Defendants failed to follow generally accepted standards of due diligence for investment advisors in evaluating the Plaintiffs' risks in the purchase of the SIB CD's and failed to make reasonable inquiry of the Plaintiffs' risks in an investment in an affiliate of investment Advisor Defendants' employer IRA. Defendants, as custodian of the IRA accounts failed to implement internal controls to monitor the activities of the Investment Advisor Defendants and failed to implement the proper internal controls to value the SIB CD's in the Trust over the life of the investments. Had the accounts been properly valued based upon the underlying assets of SIB, the fraud of Allen Stanford would have been apparent and the Plaintiffs would not have rolled their IRA into Stanford Trust.

10.

In addition to the generally accepted standards of dues diligence, the Trust served as the trustee of certain Plaintiffs' IRAs, purchasing investments on behalf of its customers. The IRA Defendants, as Officers and Directors of the Trust allowed the Investment Advisor Defendants to market the sale of the SIB CD's to retirees of Exxon and other companies who did not meet the required suitability standards. Further, the IRA Defendants allowed the Trust to purchase the SIB CD's with little or no regard or understanding of the risk profile or where

the funds were being invested or whether the required information was being disclosed to the Plaintiffs. The IRA Defendants allowed these SIB CD's to be sold to the Trust despite the fact that the Office of Financial Institutions had examined the Trust and ordered that the sales of SIB CD's be restricted and later removed from the Trust. The failure to disclose the risk perceived by OFI to each investor who purchased SIB CD's or renewed SIB CD's during this time period resulted in loss to IRA Defendants.

11.

Because of this lack of inquiry by Investment Advisor Defendants and IRA Defendants, Plaintiffs misunderstood or simply did not know the risks inherent in an investment in the SIB CD's. In truth and in fact, SIB was a "ponzi scheme", which used cash flow realized from the proceeds of the sale of other SIB CD's to new investors to pay the interest income on the older SIB CD's rather than the actual cash income generated from the investments of SIB. Had Investment Advisor Defendants or IRA Defendants performed the proper due diligence before recommending SIB CD's to Plaintiffs, Investment Advisor Defendants would have been able to correctly evaluate the risks and inform Plaintiffs of the risks, and Plaintiff would not have purchased the SIB CD's.

DEFINITIONS AND NAMES

12.

The following names and abbreviations are used in this Petition:

A. "Stanford International Bank, Ltd" or "SIB" is a private international bank domiciled in St. John's Antigua, West Indies. SIB sold the SIB CD'S to U S investors through SGC, its affiliated investment adviser. Each of the Investment Advisor Defendants was affiliated with SGC.

B. "Stanford Group Company" or "SGC" is a Houston-based corporation, which is registered with the Commission as a broker-dealer and investment adviser. It has 29 offices located throughout the U.S., including Baton Rouge SGC's principal business consists of sales of SIB-issued securities, marketed as certificates of deposit. SGC is a wholly owned subsidiary of Stanford Group Holdings, Inc., which in turn is owned by R. Allen Stanford ("Stanford") Investment Advisor Defendants are employees of and affiliated with SGC.

C. "Stanford Capital Management" or "SCM" is a registered investment adviser, which took over the management of the SAS program (formerly Mutual Fund Partners) from SGC in early 2007. Stanford Group Company markets the SAS program through SCM.

D. "SIB CD's" means the debt instruments sold by Investment Advisor Defendants and issued by Stanford International Bank, Ltd. to Plaintiffs.

E. "Trust" means the Stanford Trust Company.

MATERIAL REPRESENTATIONS MADE BY REPRESENTATIVE INVESTMENT ADVISOR DEFENDANTS TO INDUCE PLAINTIFFS TO PURCHASE THE SIB CD'S AND ROLL OVER THEIR RETIREMENT FUNDS

13.

All of the Plaintiffs had accumulated life savings based upon hard work every day of their lives. In each case, Investment Advisors approached Plaintiffs and induced them to invest their life savings in the SIB CD's based upon certain assurances. As a part of this plan, the Trust was designated as the "custodian" of the IRA accounts as required by federal law and used as a conduit to purchase to SIB CD's. Had the Trust and SEI not agreed to serve as "custodian" of the IRA accounts, which held the SIB CD's, and turn a blind eye to the activities of SIB, it is unlikely that these scheme against the IRA account holders could have been implemented or perpetuated which has resulted in the loss of their life savings.

14.

Investment Advisor Defendants represented the following to Plaintiffs at the time Plaintiffs purchased or renewed the SIB CD's (collectively the "Material Representations"):

A. SIB's investments were invested in financial instruments, which could be readily liquidated to provide redemption payments to Plaintiffs on the SIB CD's with a minimum penalty.

B. Investment Advisor Defendants had evaluated the management and investment committees of SIB and, based upon Investment

Advisor Defendants' evaluation, felt that the management and investment committees were competent and proficient to operate SIB.

C. SIB's multi-billion investment portfolio of assets employed a sizeable team of skilled and experienced analysts to monitor and manage the portfolio.

D. SIB's financial statements were audited and that the value of SIB's assets was independently verified by independent auditors and appraisers.

E. Investment Advisor Defendants had knowledge of the companies in which SIB had invested funds and believed the companies in which SIB had invested (i.) had sufficient capital and cash flow to serve any debt or preferred return to SIB and (ii.) had adequate debt to capital ratios which would satisfy the Plaintiffs that those companies were not overleveraged.

F. SIB was a bank regulated by the Antiguan government and was examined on a regular basis by the bank authorities.

G. The SIB CD's issued by SIB were called "certificates of deposits" in order to create a perception of security and limited degree of risk for the Plaintiffs and to create the impression and inference that the SIB CD's had the same degree of risk as certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve Board.

H. The SIB CD's were a safe investment vehicle suitable for long term investment with little or no risk relating to the repayment and redemption of the SIB CD's.

I. SIB and SGC had retained legal counsel to structure the investment and based upon the opinion and advice of counsel, SIB CD's were marketed in accordance with the state and federal laws of the United States and that Stanford's legal counsel had in fact approved the marketing of the product in the United States.

J. The Investment Advisor Defendants had the Plaintiffs' best interests at heart, and that no conflict of interest existed in recommending the SIB CD's.

K. The Investment Advisor Defendants had verified (i.) SIB's safety and security; and (ii.) the consistent, double-digit returns on the bank's investment portfolio and there was little or no risk the money would not be repaid because the type of investment strategies that were employed and the unique investment opportunities available to SIB.

L. All of SIB's investments were arms length transactions and there were no insider dealings between any affiliate of Stanford Group Company and Stanford Capital Management, including Allen Stanford, and SIB.

M. SIB was a profitable business and was realizing cash income from its investments.

15.

All of the above representations were inaccurate or false. Plaintiffs relied upon the truthfulness and accuracy of these facts and the assurances of Defendants that they had performed the required due diligence on the operations of SIB, and the representations made by SIB to the Investment Advisor Defendants to determine the truthfulness of these facts. In truth and in fact, Investment Advisor

Defendants never made the proper inquires and as a result violated their duties to Plaintiffs.

16.

In the alternative, Plaintiffs allege that Investment Advisor Defendants failed at all times to inform Plaintiffs that (i.) Investment Advisor Defendants had not made these due diligence inquiries on Plaintiffs' behalf, and (ii.) Investment Advisor Defendants had no knowledge, one way or another, whether the representations that were being made to the Plaintiffs were accurate.

17.

In the alternative, Plaintiffs allege that Investment Advisor Defendants made the necessary inquiries but failed to disclose the information to the Plaintiffs.

18.

In all events, the amount of the commissions received by the Investment Advisor Defendants on the sale of the SIB CD's impacted and impaired their objective evaluation of the relevant risks and issues and has resulted in substantial loss to the Plaintiffs. As proof of this fact, at a later point in time as SIB began to unravel in the late summer and fall of 2008, Investment Advisor Defendants failed to disclose to Plaintiffs the "growing storm" of SIB's liquidity crisis because of the financial impact that it would have on SGC and Investment Advisor Defendants' jobs and re-solicited the Plaintiffs' purchase of SIB CD's after Investment Advisor Defendants had sufficient knowledge of the increased risk.

19.

At the time of the renewal of the SIB CD's, Plaintiffs were reassured of the safety of the SIB CD's, when, in truth and in fact, an inquiry into the liquidity of SIB and the SIB CD's would have shown Investment Advisor Defendants that SIB had invested in illiquid investments, SIB and the companies in which SIB had invested, was experiencing severe liquidity problems, and the only source of repayment were the new funds being raised from other purchasers of SIB CD's in a giant ponzi scheme.

BACKGROUND FACTS

A. THE "BANK" AND THE "CD'S"

20.

Investment Advisor Defendants are or were employees and investment advisors of and for the SGC and SCM. The Investment Advisor Defendants had a tremendous financial incentive in successfully selling the SIB CD's. SGC and the Trust was "addicted" to the income from the sale of SIB CD's and was not a viable company without the income from the sale of the SIB CD's.

21.

However, the SIB CD's were not certificates of deposit as such term is known in the financial industry. SIB, along with its affiliate SGC and SCM, called the SIB CD's "certificates of deposit" but, in truth and in fact these were nothing more than highly speculative debt instruments similar to junk bonds. SIB, along with SGC and SCM, called itself a bank to create an impression of security, when in fact it was operating, in the best of circumstances, as

a hedge fund, and in the worst of circumstances, as Allen Stanford's private bank account.

22.

In marketing the SIB CD'S, SIB touted the liquidity of its investment portfolio. For example, in its marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Likewise, SIB trained SGC advisers that the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients."

23.

As of November 28, 2008, SIB reported $8.5 billion in total assets SIB's primary product and source of deposits was the SIB CD's.

B. THE BATON ROUGE PLAN

24.

Because of the favorable commission structure, Investment Advisor Defendants promoted the sale of the SIB CD's to the detriment of less risky financial products. The commission structure also provided a powerful incentive for Investment Advisor Defendants to aggressively sell SIB CD'S to Plaintiffs.

25.

Because of the large commissions available from the sale of the SIB CD's, the Investment Advisor Defendants began immediately recommending the SIB CD's to the Plaintiffs and others through a marketing plan aimed at attracting large percentages of the wealth in the Baton Rouge area (the "Baton Rouge Plan"). Investment Advisor Defendants represented that SIB re-invested those funds in a "globally diversified portfolio" of assets.

26.

The Investment Advisor Defendants targeted leaders in the community and promised high returns with safe certificates of deposit. These early investors received high returns to establish the legitimacy of the SIB CD's. The Investment Advisor Defendants then used the fact that known business leaders earned the promised return as a means to attract other investors.

27.

At the same time, SGC, through the Investment Advisor Defendants and others, created the appearance of stability by making large donations to Baton Rouge charitable organizations. In truth and in fact, this contrived appearance of success and interest in the Baton Rouge community was funded by the illicit commissions for the sale of the SIB CD's to SGC and indirectly from the loans SIB made to Allen Stanford.

28.

The Baton Rouge Plan was initiated to perfection in the Baton Rouge community. At the same time, SGC and the Investment Advisor Defendants were

making substantial fees and cash flow from the Baton Rouge Plan.

29.

At the same time, the Investment Advisor Defendants were not making the necessary due diligence inquiries to satisfy the duties owed by Investment Advisor Defendants to the Plaintiffs.

30.

The successful introduction and completion of the Baton Rouge Plan was a key component to the overall success of the larger SIB CD scheme. Because of the size of the Baton Rouge market and an attendant concentration of wealth, along with the "buzz" created by high interest rates and trips on private jets, the ground was fertile for the Baton Rouge Plan. Thus, a substantial amount of SIB CD's was sold to residents of the Baton Rouge area.

31.

In truth and in fact, SIB was not truly a "bank" and the SIB CD's were not truly "certificates of deposit." Upon Plaintiff's knowledge and belief, SIB was using the funds from the SIB CD's to either (i.) unsuccessfully invest in mostly illiquid investments that have little or no value or (ii.) line the pockets and pay for the profligate lifestyles of the principals of SGC and SCM, including Allen Stanford.

32.

As long as Investment Advisor Defendants were successful in selling new SIB CD's at a healthy rate, SIB was able to continue to "operant" as a going concern. However, SIB was confused about what

was really a profit--it apparently felt that the ability to create cash flow from SIB CD's sales was the same thing as earning a profit. SIB, through the Investment Advisor Defendants' efforts, seemed to be following an approach that a dollar borrowed was a dollar earned.

33.

The Baton Rouge Plan operated for a period of approximately seven years with full steam ahead with an attitude of "laissez les bon temps rouller" — "let the good times roll". However, once investments began to contract in the later summer and fall of 2008 and holders of SIB CD's began to attempt to cash out the SIB CD's, the house of cards quickly collapsed.

34.

As the old saying goes, "You never know who is swimming naked until the tide goes down." In this case, Investment Advisor Defendants had been swimming naked by failing to make the necessary due diligence inquiries and Investment Advisor Defendants had failed to look underwater, in violation of their duty to Plaintiffs.

35.

Simply put, Investment Advisor Defendants had failed to make the simplest of inquiries about SIB, which would have shown the problems and risks of the SIB CD's. The Investment Advisor Defendants failed to independently verify the information, which was provided to the Investment Advisor Defendants by SIB, which resulted in the losses of Plaintiffs.

THE NEGLIGENT REPRESENTATIONS

36.

During the course of Investment Advisor Defendants' relationship with Plaintiffs, the Investment Advisor Defendants made numerous negligent representations to Plaintiffs, which breached the duty owed by the Investment Advisor Defendants to the Plaintiffs. If Plaintiffs had been aware of the truth, Plaintiffs would not have purchased the SIB CD's.

37.

A. Representation No. 1. Investment Advisor Defendants negligently represented that SIB's investments were invested in liquid financial instruments, which could be readily liquidated to provide liquidity to the Plaintiffs' certificates of deposit with a minimum penalty.

38.

In selling the SIB CDs, SIB touted the liquidity of its investment portfolio. For example, in its SIB CD marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Likewise, SIB trained SGC advisers that the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients."

39.

Investment Advisor Defendants, in the exercise of their duties to Plaintiffs as an investment advisor, should have known that these representations were not true. Investment Advisor Defendants failed to make appropriate inquiries or seek the appropriate verification to determine the veracity of such statements.

40.

In truth and in fact, SIB's investment portfolio was not invested in a "well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Instead, the portfolio consisted primarily of illiquid investments or no assets at all. The Investment Advisor Defendants at all times failed to request that SIB disclose its financial statements, valuation reports, methodology of reporting net income, or positions reports to them so that the Investment Advisor Defendants could have adequate information to advise their client. The Investment Advisor Defendants never requested that SIB disclose the performance of these investments. Investment Advisor Defendants never disclosed to Plaintiffs that this information had not been provided and was necessary to make prudent decisions as to whether to invest in the certificates of deposit. Investment Advisor Defendants should have known that SIB's investments were not allocated as advertised by SIB's investment objectives or as detailed in SIB's financial statements.

41.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the makeup of the portfolio of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for Investment Advisor Defendants' review prior to recommending the investments and receiving commissions on the investment.

42.

B. <u>Representation No. 2.</u> Investment Advisor Defendants negligently represented that SIB's financial statements were audited and prepared in accordance with generally accepted accounting principles and that the value of SIB's assets were independently valued by independent auditors and appraisers.

43.

Investment Advisor Defendants represented to Plaintiffs that SIB's financial statements were audited and prepared in accordance with generally accepted accounting principals and further that SIB's assets were independently valued by independent and governmental auditors and appraisers. Contrary to these representations to investors, SIB's assets were not audited or verified. Instead, SIB's accountant, C. A. S. Hewlett & Co., a small local accounting firm in Antigua was responsible for auditing SIB's multi-billion dollar investment portfolio.

44.

In truth and in fact, the detailed financial statements of the assets of SIB were never requested or reviewed by Investment Advisor Defendants. Further, the financial statements were not prepared in accordance with Generally Accepted Accounting Principles ("GAAP"). The assets on SIB's financials statement were not valued in accordance with "fair value" accounting principles. Investment Advisor Defendants in fact had no knowledge of the methodology used by SIB in recognizing and reporting income and made no attempt to analyze the operating net cash flow of SIB. In truth and in fact, SIB went to great lengths to prevent any true independent examination of those portfolios and SIB's internal accountants reverse-engineered SIB's financial statements to report investment income that SIB did not actually earn.

45.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the financial reporting of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for the Investment Advisor Defendants to review prior to recommending the investments and receiving commissions on the investment.

46.

C. <u>Representation No. 3</u>. Investment Advisor Defendants negligently represented that professionals were investing and monitoring SIB's portfolio of assets and that SIB's multi-billion dollar investment portfolio

was monitored by a team of independent analysts.

47.

Investment Advisor Defendants represented to Plaintiffs that professionals were investing and monitoring SIB's portfolio of assets and that SIB's multi-billion dollar investment portfolio was constantly monitored by a team of analysts

48.

In truth and in fact, in violation of their duty to Plaintiffs, Investment Advisor Defendants made no independent inquiry of this fact before representing this fact to the Plaintiffs. In truth and in fact, the vast majority SIB's multi-billion dollar investment portfolio was not monitored by a team of analysts, but rather by two people — Allen Stanford and James Davis. Contrary to Investment Advisor Defendants' representations to Plaintiffs, the Antiguan regulator responsible for oversight of the bank's portfolio, the Financial Services Regulatory Commission, did not audit SIB's portfolio or verify the assets of SIB as SIB claims in its financial statements.

49.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to the lack of professionals investing and monitoring the portfolio of SIB and negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for the Investment Advisor Defendants to review prior to recommending the investments to Plaintiffs and receiving commissions on the investment

50.

D. <u>Representation No. 4.</u> Investment Advisor Defendants negligently represented that SIB was a "bank" that was regulated by the Antiguan government and that the SIB CD's were "certificates of deposit" to create an appearance of safety and trust.

51.

Investment Advisor Defendants represented to the Plaintiffs that the SIB CD"s were safe because SIB was a "bank" and that the Antiguan regulator responsible for oversight of the bank's investment portfolio, the Financial Services Regulatory Commission audited its financial statements. Further, the Investment Advisor Defendants represented to the Plaintiffs that the SIB CD's were identical to certificates of deposit from banks located in the United States of America.

52.

In truth and in fact, SIB was not a "bank" but was, at best, a speculative hedge fund and, at worse, Allen Stanford's piggy bank.

53.

Further, the SIB CD's were "certificates of deposit" in name only. These representations were made for the Plaintiff's to believe that they had the same degree of risk of certificates of deposit issued by commercial banks regulated by the FDIC and Federal Reserve Board. In truth and in fact, the certificates of deposits were "junk bonds" issued to finance a hedge fund with a high degree of risk because of the volatility of the market and extent of leverage.

54.

Defendant negligently represented to Plaintiffs that SIB was a bank and that the SIB CD's were certificates of deposits. Investment Advisor Defendants negligently failed to disclose to Plaintiffs the difference between a junk bond and a certificate of deposit and negligently advised Plaintiffs to purchase the SIB CD's when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

55.

E. <u>Representation No. 5.</u> Investment Advisor Defendants negligently represented (i.) that its legal counsel had reviewed the formation and operation of SIB and the marketing of the SIB CD's and (ii.) that the operation of SIB and the sale of the SIB CD's was in accordance with the law.

56.

Investment Advisor Defendants represented (i.) that its legal counsel had reviewed the formation and operation of SIB and the marketing of the SIB CD's and (ii.) that the operation of SIB and the sale of the SIB CD's were in accordance with the law. In truth and in fact, the operation was not in accordance with the laws of the United States based upon the recent reports of the receiver of SGC. Had the Investment Advisor Defendants known that SIB was not being operated in accordance with the law, Plaintiffs would not have purchased the SIB CD's.

57.

F. <u>Representation No. 6</u>. Investment Advisor Defendants negligently represented that based upon their principal-client relationship, the Investment Advisor Defendants had the Plaintiffs' best interest at heart. The Investment Advisor Defendants further failed to disclose the conflict of interest that arose from the significant commissions that the Investment Advisor Defendants realized by recommending and selling the SIB CD's and never disclosed that SGC as a whole was reliant upon the promotion of the SIB CD'S product.

58.

The Investment Advisor Defendants received commissions on the sale of the SIB CD's that were exponentially higher than would result frorn the sale of a certificate of deposit from a United States regulated bank. The Investment Advisor Defendants failed to disclose the conflict of interest apparent in such an arrangement to the Plaintiffs. Further, the Investment Advisor Defendants failed to disclose that SGC as a whole was reliant upon the promotion of the SIB CD'S product and that the failure to sell the SIB CD's would affect the going concern value of SGC and the employment security of the Investment Advisor Defendants.

59.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs the issues relating to their conflict of interest and attempt to serve two masters. Despite this conflict, Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB

CD's of SIB prior to recommending the SIB CD's and receiving commissions on the purchase.

60.

G. <u>Representation No. 7.</u> Investment Advisor Defendants negligently represented that each Defendant, as each Plaintiff's investor advisor, had knowledge of SIB's investments and the profitability of SIB's investments and had evaluated and valued the assets of SIB, and, as a result, there was little or no risk the money would not be repaid because the types of investment strategies that were employed by SIB and the unique investment opportunities available to SIB.

61.

Investment Advisor Defendants negligently represented that each Defendant, as each Plaintiff's investor advisor, had knowledge of SIB's investments and the profitability of SIB's investments and had evaluated and valued the assets of SIB, and, as a result, there was little or no risk the money would not be repaid because of the types of investment strategies that were employed by SIB and the unique investment opportunities available to SIB. In truth and in fact, it now appears that Investment Advisor Defendants had no knowledge of the investments of SIB.

62.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that Investment Advisor Defendants had no knowledge of the specific assets in which SIB was investing or the value of those investments. If Investment Advisor Defendants had

disclosed to Plaintiffs that Investment Advisor Defendants had no knowledge of the assets in which SIB was investing or the value of those assets, Investment Advisor Defendants would not have purchased the SIB CD's. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD'Ss when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

63.

H. <u>Representation No. 8.</u> Investment Advisor Defendants negligently represented that all of the investments were arms length transactions and there were no insider dealings between any affiliate of SGC and SCM, including Allen Stanford, and SIB.

64.

Investment Advisor Defendants negligently represented that all of the investments were arms length transactions and there were no insider dealings between any affiliate of SGC and SCM, including Allen Stanford, and SIB Investment Advisor Defendants never described to Plaintiffs the amount of profit that SGC was realizing from the operation of SIB or from the sale of the SIB CD's or the amount of funds that SIB had loaned to entities related to SGC and Allen Stanford. In truth and in fact, based upon information obtained from the receiver, substantial loans in excess of one billion dollars, which did not meet the investment criteria of SIB, had been made by SIB to Allen Stanford.

65.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that they had made no inquiry of whether insider loans existed. If Investment Advisor Defendants had disclosed to Plaintiffs that the Investment Advisor Defendants had made no inquiry concerning the existence of the insider loans or the amount of fees that SGC was earning from SIB or the level of importance the Baton Rouge Plan was to the successful operation of SGC, Investment Advisor Defendants would not have purchased the SIB CD's. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD's of SIB when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

66.

Investment Advisor Defendants negligently failed to disclose to Plaintiffs that a substantial portion of the income of SGC and Stanford Trust was being generated from the sale of the SIB CD's, that SGC was addicted to this commission income, and that any termination of the sale of the SIB CD's would materially and adversely affect the going concern of the Stanford financial empire.

67.

I. <u>Representation No. 9.</u> Investment Advisor Defendants negligently represented that, at the time of the renewal of the SIB CD's, the SIB CD's were liquid, when in truth in fact, an inquiry of the liquidity of the investments would have shown Investment Advisor Defendants that the SIB CD's were invested in

illiquid investments and the only source of repayment were the new funds being raised from other purchasers of SIB CD's.

68.

Investment Advisor Defendants represented that SIB's investment were in liquid financial instruments. Contrary to these representations, SIB's investment portfolio was not invested in liquid financial instruments or allocated in the manner described in its promotional material and public reports. Instead, a substantial portion of the bank's portfolio was placed in illiquid investments, such as real estate and private equity.

69.

Plaintiffs accepted these representations and became convinced that the SIB CD's were in the best interest of Plaintiffs. At the direction of Investment Advisor Defendants, Plaintiffs invested in the SIB CD's.

70.

However, beginning in late 2007 and early 2008, SIB began experiencing liquidity problems and was not able to redeem the SIB CD's. Because of these problems, a special marketing plan was setup by SGC to encourage the marketing of the SIB CD's. Investment Advisor Defendants failed to inquire about the liquidity of the SIB CD's during this time period and failed to inform the Plaintiffs of the liquidity problems at this time. Further, during this same time period, the state of Louisiana, Office of Financial Institutions, commenced an examination of the Trust and advised the Trust that (i.) no further SIB CD's should be sold because of the

Trust's heavy investment in SIB CD's and (ii.) in 2008, the Trust should remove all SIB CD's from its portfolio. Investment Advisor Defendants negligently advised Plaintiffs to invest in the SIB CD's when this information was not available for Investment Advisor Defendants review prior to recommending the SIB CD's and receiving commissions on the purchase.

71.

J. Representation No. 10. Investment Advisor Defendants negligently represented that SIB was a profitable business and was realizing cash income from its investments.

72.

Investment Advisor Defendants represented to Plaintiffs that SIB was a profitable company and was realizing net profits in the form of cash payments from the companies in which SIB invested. In truth and in fact, the net cash flow to SIB, other than the net cash flow from new investors was minimal. The net profits were fictitiously created by revaluation of assets and asset swaps that never occurred. Had Plaintiff known that SIB's earnings were fictitious, they would never have invested funds or sought renewal of their obligations.

73.

K. Representation No. 11. Investment Advisor Defendants negligently represented that (i.) Investment Advisor Defendants had knowledge of the companies in which SIB had invested funds; (ii.) believed the companies had sufficient capital and cash flow to service any debt or preferred return to SIB and

(iii.) their debt to capital ratios were such that the investors would not have to be concerned that the companies were over leveraged.

74.

Investment Advisor Defendants represented to Plaintiffs that they had knowledge of the companies in which SIB invested and that each of these companies has sufficient equity and earnings to repay any funds advance by SIB. In truth in fact, Investment Advisor Defendants had no knowledge of where SIB had invested the funds from the SIB CD's and made no independent inquiry on the management, financial operations, and capital structure, and leverage of the companies in which SIB invested.

75.

L. <u>Representation No. 12.</u> Investment Advisor Defendants negligently represented that the Trust investment was prudent and safe and the Trust was being operated in accordance with Louisiana law, when in truth in fact, the Office of Financial Institutions for the state of Louisiana had issued orders to limit the further sale of SIB CD's during 2007 and 2008 and ordered that the Trust divest itself of all SIB certificates.

76.

The Trust was chartered in and regulated by the state of Louisiana. Upon information and belief, as part of its regulatory oversight, the state of Louisiana, Office of Financial Institutions perceived a risk associated with the sale of the SIB CD's and diversification of the Trust's trust portfolio. The

state of Louisiana, Office of Financial Institutions also ordered that the Trust cease purchasing additional SIB CD's. In 2008, based upon information and belief, the state of Louisiana ordered the Trust to divest itself of all SIB certificates of deposit. This information was never disclosed to Plaintiffs.

STANFORD TRUST COMPANY AND THE IRA DEFENDANTS

77.

Stanford Trust Company is chartered in Louisiana and operated as a Louisiana Trust Company.

78.

A substantial portion of the business of the Stanford Trust was the serving as custodian for IRA accounts which held the SIB CD's.

79.

A self-directed IRA is an IRA that requires the account owner to make investment decisions and investments on behalf of the retirement plan. The Internal Revenue Code ("Code") and Internal Revenue Service ("IRS") regulations require that either a qualified trustee or custodian hold the IRA assets on behalf of the IRA owner. Generally, the trustee/custodian will maintain the assets and all transactions and other records pertaining to them, file required IRS reports, issue client statements, and perform other administrative duties on behalf of the self-directed IRA owner of the IRA account.

80.

Stanford Trust was intended to qualify as an individual retirement account custodian under Code Section 408. The Trust expressly agreed with Plaintiffs that it would comply with IRS regulations. Any provision of the Plan and Trust Agreement (or the associated IRA Application or Terms and Conditions) was invalid to the extent it is inconsistent, in whole or in part with Code Section 408 and the regulations issued there under.

81.

When a person would retire from a company, the Trust and Investment Advisor Defendants would actively seek this person's retirement funds and would attempt to have these funds rolled over into IRA account of which either Pershing or Stanford Trust was the custodian. Generally, the funds sent to Pershing would be deposited in marketable securities and the funds transferred to Stanford Trust was be used to purchase SIB CD's which were administered by SEI.

82.

Stanford Trust routinely and regularly contacted the Plaintiffs and other retirees as a source of business for the sale of SIB CD's. This constituted a major source of business of the Trust, and provided substantial income to the Stanford Group because of the commissions paid to the home office. The designation of the Trust as custodian for IRA accounts that invested in SIB CD's and the continued operation of the Stanford Trust was a key component to the successful marketing of the SIB CD's to IRA account holders. Further, the turning of a "blind eye" by the Trust and the IRA Defendants to

(i.) the investment activities of SIB, (ii.) the marketing techniques of Investment Advisor Defendants and the representations and omissions that were being made, and (iii.) the over valuation of the SIB CD's in the portfolio of the Trust, was a key ingredient, if not the most important, to the perpetuation of the IRA SIB CD scheme.

83.

In their capacity as trustee, the Trust took title, custody, possession, and ownership of the funds in the Plaintiff's IRA's, which were entrusted to them by each Plaintiff

84.

The Trust entered into standardized agreements with each Plaintiff. In exchange for annual account fees, administrative and other fees paid by the Plaintiffs, the Trust undertook the responsibility of acting as custodian of the IRA accounts, taking title, custody, possession, and ownership of the funds in the IRA's. The Trust breached the standardized agreement.

85.

Under the Trust and Plan Agreement, the Trust was required to provide Plaintiffs with account statements that reflected the value of the IRA assets, which must be reported as accurately as possible using the resources available to it. The Trust was to provide Plaintiffs with quarterly account statements purportedly reflecting the value of their IRA, when in the fact those accounts had little or no value because SIB had nonexistent assets. Stanford Trust violated the agreement by providing Plaintiffs with inaccurate account

statements and maintaining inaccurate fiduciary books and records.

86.

In exchange for administrative review fees, the Trust undertook the responsibility of acting as a custodial trustee, holding legal title to IRA accounts on behalf of Plaintiffs. As set forth herein, the Trust apparently operated under the incorrect assumption that if it attempted to contractually disclaim any liability for the loss of an investment's value, it could, with impunity, collect various fees and charges from investors while ignoring the various warning signs of the SIB fraud.

87.

In order to receive the rollover of the funds from each of the Plaintiffs former retirement accounts in to the Trust, each Investment Advisor Defendants would generally require the retiree to execute an accredited investor form to certify that his or her net worth was in excess of $1 million dollars. This requirement was mandated by law to insure that the investment in the SIB CD was suitable for the Plaintiff retirees.

88.

As a custodian of the account, the Trust and IRA Defendants were requited to independently verify the accuracy of the information from each Plaintiff which was represented by the Investment Advisor Defendants because of the affiliate relationships.

89.

Further based upon information and belief, the Office of Financial Institutions ("OFI") for the State

of Louisiana informed the Trust in 2007 that it should cease marketing the SIB CD's because of the need to diversity asset and because of the risks associated with the operation of the foreign bank.

90.

Further based upon information and belief, the OFI informed the Trust that all SIB CD's should be removed from the Trust in 2008 because of the risk associated with the CD's and SIB's inability to inform the OFI what assets, if any, in which the funds from the CD's were invested.

91.

The Trust and the IRA Defendants violated their duties to Plaintiffs despite warnings by the OFI of the risk of SIB's investment strategies and operations. OFI already knew of the risk associated with the sale of the SIB CD's and informed IRA Defendants of this risk, yet the IRA Defendants did nothing to change its operational procedures to prevent another catastrophe or inform the Plaintiffs of the new risks perceived by OFI.

92.

At all times, the IRA Defendants, who were officers and directors of the Stanford Trust or SG, had a duty to the Trust and to its IRA customers to monitor, set policy and develop internal controls to:

A. Verify the accuracy of the information which was being represented by the Investment Advisor Defendants to Plaintiffs or verify the truthfulness of the representations made by Investment Advisor Defendants to Plaintiffs as to the risk of the SIB CD's;

B. Verify that the Plaintiff's investment in the IRA was suitable for each Plaintiff and that each Plaintiff who was a retiree was an accredited investor before the Trust purchased a SIB CD for the IRA account of the Plaintiffs;

C. Assure that the SIB CD's were marketed and administered in accordance with the requirements of OFI and to initiate a plan of full disclosure of any regulatory issues raised by the OFI to the Plaintiffs and other holders of IRA's so that they would have the option to change investment strategy and to open new IRA accounts with different, safer, more diversified investments;

D. Assure that the SIB CD's, the assets of the Trust, and SIB were properly valued on a periodic basis;

E. Assure that the Trust was aware of where the assets of SIB were invested in order to be in a position to evaluate the risk of the trust investment based upon the prudent man standard;

F. Fulfill its legal obligations required by the contracts entered into between the Trust and each IRA beneficiary as required by law;

G. Implement a program of risk management and review of the investment portfolio in order to be incompliance with the fiduciary duties created by the agreements and the law;

H. Determine or inquire or monitor the representations or warranties made to Plaintiff by Investor Investment Advisor Defendants at the time the rollover funds were solicited;

I. Implement a plan of risk management to assure broad diversification of assets so at to

minimize the risk of the investment in high risk, speculative, liquid securities;

J. Advise the beneficiaries of the Trust of the risk profile of the type of investment that was being made with its funds.

93.

In truth and in fact, the IRA Defendants failed to perform any of these functions. Plaintiffs have been damaged as a foreseeable result of the negligence, gross negligence and/or recklessness of the Trust and the IRA Defendants. The IRA Defendants are liable for the Trust's negligence, gross negligence and/or recklessness, as legal successors by merge or otherwise, and/or as controlling persons of the Trust.

94.

The Trust is not relieved of its fiduciary obligations by the exculpatory provisions set forth in the standardized Trust and Plan Agreement, and the terms and conditions set forth in the accompanying IRA application. By reason of its inequitable and other unlawful conduct alleged herein, it is contrary to public policy to allow Trust and IRA Defendants to enforce this or any other exculpatory clause because of the affiliate relationships between the parties and the financial benefits that each derived directly and indirectly.

95.

The Trust and IRA Defendants had a fiduciary relationship with Plaintiffs a fiduciary duty of loyalty, a duty to exercise reasonable care and skill, and a duty to deal with them fairly and impartially. The Trust's conduct described in this petition constitutes a breach of their fiduciary duties.

96.

As a fiduciary, the Trust and IRA Defendants were at a minimum required to insure that Plaintiff's money was safe, that the periodic statements of value issued by the Trust accurately reflected the actual values of their accounts, and the investments by SIB were legitimate.

97.

The Trust was required under its contracts with the Plaintiffs to report truthfully and accurately to them the account values and the assets held in the IRA Account, which it failed to do. The Trust, as custodial trustees, obligated itself to certain contractual duties, including the duty to report customers' holding and the accurate value thereof timely and accurately. As officers and directors of the Trust, IRA Defendants had a duty to Plaintiffs to assure that this duty was in fact implemented.

98.

The Trust was required to take custody of the securities, or at a minimum, verify that the value of the assets identified in the financial statements in SIB to insure that the certificate of deposit was valued correctly in the IRA's. As officers and directors of Stanford Trust, IRA Defendants had a duty to Plaintiffs to assure that this duty was in fact implemented.

99.

The Trust, which had exclusive legal control over the IRA assets, failed to hold, safe-keep, or adequately review and value the IRA assets, which the Plaintiffs entrusted to them in violation of their duty of care. As officers and directors of the Trust,

IRA Defendants had a duty to plaintiff to assure that this duty was in fact implemented.

100.

Plaintiffs have suffered substantial financial injury as a result of the conduct alleged herein.

101.

IRA Defendants knew or, absent negligence, gross negligence or recklessness, should have known, about the many red flags, concerning the Stanford investments, as alleged herein, including the warning by OFI, about the integrity of the SIB.

102.

IRA Defendants knew or, absent negligence, gross negligence or recklessness, should have known that the account statements it received from SIB, were falsified, and did not accurately reflect the assets in the IRA's.

103.

IRA Defendants were negligent, grossly negligent and/or reckless in not modifying their procedures, not verifying that the assets existed, and not properly valuing the assets in the IRA's. Instead, the IRA Defendants, in breach of their duty of care, relied upon SIB to hold the assets and perform the independent valuation. The Trust and IRA Defendants were negligent, grossly negligent and/or reckless in not investigating and confirming the accuracy of SIB valuation, and in otherwise allowing SIB and Stanford to convert, commingle, and abscond with the assets in the IRA's, that the Plaintiffs entrusted to Stanford Trust.

THE ROLE OF SEI

104.

SEI and the Trust entered into an agreement which SEI would perform the trust functions of accounting and reporting of the IRA investments in SIB CD's. The same function was performed by Pershing for all funds and marketable securities.

105.

SEI is a leading global provider of outsourced asset management, investment processing and investment operations solutions. SEI provided investment processing, fund processing, and investment management business outsourcing solutions to the Trust by utilizing SEI's proprietary software system to track investment activities in multiple types of investment accounts, and allowed the Trust to outsource trust and investment related activities.

106.

As a part of the functions of SEI, SEI was compensated to account for and value the investments of the Trust and each of the Plaintiffs in the SIB CD's. As such, SEI agreed to perform the following:

A. Assure that the SIB CD's were administered in accordance with the requirements of OFI and to value the assets of the IRA's so that each Plaintiff would have the option to change investment strategy and to open new IRA accounts with different, safer, more diversified investments in the event the value changed;

B. Assure that the SIB CD's, the assets of the Trust, and SIB were properly valued on a periodic basis;

C. Determine the value of the assets of SIB and whether the funds were invested in order to be in a position to evaluate the risk of the trust investment based upon the prudent man standard;

D. Fulfill its legal obligations required by the contracts entered into between the Trust and each IRA beneficiary as required by law;

E. Implement a program of risk management and review of the investment portfolio in order to be incompliance with the fiduciary duties created by the agreements and the law;

F. Implement a plan of risk management to assure broad diversification of assets so at to minimize the risk of the investment in high risk, speculative, liquid securities;

G. Advise the beneficiaries of the Trust of the risk profile of the type of investment that was being made with its funds.

107.

SEI, in particular, put its internationally known and respected brand name behind Stanford Financial and the Trust and SIB, thereby lending recognition and credibility to Stanford Financial and the Trust and SIB and supporting its sales efforts.

108.

SEI had knowledge that the SIB CD's were being marketed to individual investors who had IRA's because that is the primary valuation and reporting performed by SEI. SEI had full knowledge that the

services it was performing was directly for, and in connection with the offering of the SIB CD's and was an integral part of the process used by SG and the Trust to promote and sell SIB CD's to clients in Louisiana. Therefore SEI was aware that they were involved assisting a group that was impermissibly operating as an investment company selling unregistered securities from, by and through Louisiana.

109.

SEI actively and materially aided SG and the Trust to perpetrate the massive Ponzi scheme now alleged by the SEC.

110.

SEI consistently, year after year, allowed their names to be mentioned prominently in SIB's Annual Reports, alongside Allen Stanford and Jim Davis and the rest of the SIB Board of Directors and the management of SIB, therefore lending more legitimacy to the overall operations of SG, the Trust and SIB.

111.

In choosing to accept the request of SG, the Trust and SIB to act as the de facto administrator of the IRA's, SEI assumed a duty to disclose all of the information it knew about SG, the Trust and SIB and not to make partial disclosures that might, and did, convey a false impression about SIB. A defendant may not deal in "half-truths" and SEI had more access to information regarding SG, the Trust and SIB than Plaintiffs did and clearly had an incentive to market and sell SIB CD's to Plaintiffs so that SIB, and hence SG and the Trust, could

continue in business and continue contracting SEI services. Moreover, SEI was clearly on notice that the investing public in Louisiana, who were being actively solicited to roll over the proceeds of their retirement accounts into SIB CD's, were being offered securities, but SEI made no attempt to determine whether the offering was a public offering or whether the offering to the retirees met the proper disclosure requirements.

112.

SEI knew that Plaintiffs would and did rely on the offering statements in making their investment decisions concerning buying the SIB CD's; indeed the very purpose of the reports rendered by SEI was to influence the investors' decision-making process in favor or purchasing and continuing to hold SIB CD's.

113.

By agreeing to assist SG, the Trust and SIB to sell and promote investment products, SEI actively joined the SG and Trust sales force and therefore knew or should have known that they were acting as links in the chain of selling unregistered securities to Plaintiffs from, by and through Louisiana. But for Defendants' participation, Stanford Financial and Stanford Trust and SIB could not have sold unregistered securities to Plaintiff's from, by and through Louisiana.

114.

SEI intentionally and actively aided and abetted SG and the Trust to operate as an illegal hedge or mutual fund in Louisiana and sell securities from, by and through Louisiana, by means of the conduct described herein. With full knowledge that SG and

the Trust was selling securities from, by and through Louisiana, SEI aided and abetted and perpetuated SG, the Trust and SIB's violations of the Louisiana Securities Law by continuing to provide the letters herein described for the known purpose of luring new customers like Plaintiffs to SG, the Trust and SIB and selling them the worthless SIB CD's.

115.

Said conduct was designed to perpetuate the SG and Trust "myth" regarding the safety and security of the SIB CD's, and to support the marketing, promotional and sales activities described herein. SEI's actions as described herein allowed SG, the Trust and SIB to continue to sell securities to Plaintiffs from, by and through Louisiana using untruths and materially misleading omissions.

116.

By their conduct described herein, SEI participated with SG, the Trust and SIB in a fraudulent scheme, making Defendants directly liable for fraud. In particular, Defendants made the conscious decision to participate in the scheme by joining the SG and Trust sales force to market promote and advertise SIB to prospective clients in order to assist and enable SG and the Trust to continue to sell SIB CD's based on the misrepresentations that they were fully insured. SEI's actions in participating in the fraudulent scheme are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in the Trust as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

117.

Defendant SEI is directly liable for the acts and omissions of any subsidiary that performed any of this functions or failed to perform any of these function and each subsidiary is the alter ego of SEI and conducted the business including the schemes described herein. Specifically, SEI owns, controls, and dominates each subsidiary listed on its website under www.SEIC.com to such an extent that all subsidiaries in reality functions as a mere division or branch of SEI. Indeed SEI and all of its subsidiaries, operate as one single unified worldwide business unit or single business enterprise, all operating under the SEI brand, international trademark or tradename and logo, which is prominently displayed on all of the SEI documents and advertising. SEI controls the manner in which its subsidiaries are perceived by the public and therefore intentionally creates the impression in the minds of third parties that SEI is one unified, global entity that acts as a single unit. SEI's own website touts its global approach to client service, in which SEI combines its global resources to offer the full benefit of every service that SEI offers worldwide.

INSURANCE COVERAGE

118.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided errors and omissions liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the errors and omissions liability policies provides coverage for damages to

Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

119.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided directors and officers liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the directors and officers liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

120.

At all or relevant times ABC Bond Company provided fidelity bond coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective fidelity bonds. Further, each of the fidelity bonds provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

121.

At all or relevant times RST Insurance Companies provided comprehensive general liability coverage fbr IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the comprehensive general liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

Investment Advisor Defendants
(Counts One to Six)

COUNT ONE
NEGLIGENCE

122.

Paragraphs 1 to 76 are incorporated herein by reference.

123.

Investment Advisor Defendants owe to Plaintiffs a duty of due care as their investment advisors. This duty includes the obligations to perform due diligence on Plaintiffs' behalf prior to making an investment in the SIB CD's and to not make representations to the Plaintiffs about facts that the Investment Advisor Defendants had not independently confirmed.

124.

Defendants breached this duty of care and were negligence in the performance of their duties as investment advisor as set forth above.

125.

Plaintiffs have been damaged by Investment Advisor Defendants material breaches of duty in an amount to be shown at the trial of this matter.

COUNT TWO
BREACH OF CONTRACT

126.

Paragraphs 1 to 76 are incorporated herein by reference.

127.

A written or oral agreement existed between Plaintiffs and investment Advisor Defendants The terms of the agreement were that Investment Advisor Defendants would advise Plaintiffs concerning the risk of certain investments by spending the time necessary to evaluate the investment.

128.

Investment Advisor Defendants breached the terms of this agreement by not spending the proper time necessary to evaluate the investment and/or perform due diligence on the investment. Investment Advisor Defendants failed to obtain the information, which were material to Plaintiff's investment decision in the SIB CD's and failed to inform Investment Advisor Defendants of the compensation arrangements between SGC and SIB. In doing this, Investment Advisor Defendants have breached a contract or contracts with Plaintiffs.

129.

The actions of Investment Advisor Defendants have further breached their implied duties of good faith and fair dealing.

130.

Plaintiffs have been damaged by Investment Advisor Defendants material breaches of contract in an amount to be shown at the trial of this matter.

COUNT THREE
NEGLIGENT REPRESENTATION

131.

Paragraphs 1 to 76 are incorporated herein by reference.

132.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have made negligent representations to Plaintiffs.

133.

In the course of their business, Investment Advisor Defendants made representations to Plaintiffs in which they supplied false information.

134.

Investment Advisor Defendants made these untrue representations for the guidance of Plaintiff, and Plaintiffs justifiably relied on these false representations.

135.

Investment Advisor Defendants did not exercise reasonable care or competence in obtaining the accuracy of the information set forth in the Material Representations and communicating the correct information to Plaintiffs.

136.

Investment Advisor Defendants' negligence has caused damage to Plaintiffs in an amount to be shown at the trial of this matter.

COUNT FOUR
BREACH OF FIDUCIARY DUTY

137.

Paragraphs 1 to 76 are incorporated herein by reference.

138.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have breached the fiduciary duties owed to Plaintiffs by Investment Advisor Defendants.

139.

The relationship of trust and confidence between Plaintiffs and Investment Advisor Defendants gave rise to a fiduciary duty on the part of Investment Advisor Defendants. Investment Advisor Defendants therefore owed a duty to Plaintiffs to act fairly and in the utmost good faith in all of their transactions with Plaintiffs, to make full and fair disclosure of all material facts to Plaintiffs, not to take advantage of their relationship with the Plaintiffs for personal gain, and to act openly and honestly regarding their transactions with Plaintiffs.

140.

Investment Advisor Defendants breached this fiduciary duty by acting in a reckless manner in failing to determine the accuracy of the Material Representations.

141.

Investment Advisor Defendants violated they fiduciary duty when they failed to disclose their conflicts of interest as described above.

142.

As a result of the foregoing breaches of fiduciary duty by Investment Advisor Defendants, Plaintiffs are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT FIVE
UNFAIR TRADE PRACTICES
(La. Rev. Stat. § 51:1401, *et seq.*)

143.

Paragraphs 1 to 76 are incorporated herein by reference.

144.

Based upon the above allegations, Investment Advisor Defendants have violated the Louisiana Unfair Trade Practices Act, La. Rev. Stat. § 51:1401, *et seq.* (the "Act"), and such actions constitute deceptive trade practices within the meaning of the Act.

145.

Accordingly, Plaintiffs are entitled to damages under the Act and are entitled to reasonable attorneys' fees, as provided for therein.

COUNT SIX
VIOLATION OF THE LOUISIANA SECURITIES LAW

146.

Paragraphs 1 to 76 are incorporated herein by reference.

147.

Investment Advisor Defendants have violated the Louisiana Securities Act, La. R.S. 51:701, *et seq*.

148.

All Investment Advisor Defendants sold securities to Plaintiffs, within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Act. Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of material facts, which made their statements misleading in the light of the circumstances in which they were made.

149.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Act.

150.

In addition, Investment Advisor Defendants sold securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana.

151.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. IRA Investment Advisor Defendants are liable based upon Section 714 (A) and (B) of the Louisiana Securities Law. IRA Defendants made no attempt to inquire whether SIB was marketing of the unregistered securities which would have required SIB to disclose much more extensive information

concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law and attempted to circumvent this requirement by designating certain persons as being suitable for the investment, when they were not.

152.

Investment Advisor Defendant made the referenced representations in reckless disregard of the truth, and could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) of the Louisiana Securities Act.

153.

In accordance with Section 712(b) of the Louisiana Securities Act, every, or director of such person liable under 714(A)or every person occupying a similar status or performing similar functions, who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist.

154.

The Investment Advisor Defendants could have, in the exercise of reasonable care, determined the existence of the facts set forth in paragraphs 36 to 76, or in the alternative, determined the omission of certain facts that was making the offering of the SIB CD's misleading.

155.

Plaintiff's relied on the foregoing material representations and/or omissions to their detriment.

156.

Investment Advisor Defendants, directly and indirectly, prepared, disseminated or used contracts, written offering documents, promotional materials, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

157.

Investment Advisor Defendants made the referenced representations in reckless disregard of the truth or in the alternative could have discovered these facts if they had exercised "reasonable care" as set forth in Section 714(B) of the Louisiana Securities Law.

158.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs have sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter and a return of all amounts that have been invested.

IRA Defendants
(Counts Seven to Eleven)

COUNT SEVEN
NEGLIGENCE

159.

Paragraphs 1 to 121 are incorporated herein by reference.

160.

IRA Defendants owe to Plaintiffs a duty of due care as an officer and director of the Trust that solicited the roll over of Plaintiffs' retirement funds to the IRA's. This duty includes the obligations to perform due diligence on Plaintiffs' behalf prior to making an investment in the SIB CD's and to not make representations to the Plaintiffs about facts that the IRA Defendants had not independently confirmed. Defendants breached this duty of care and were negligent in the performance of their duties as trust advisors as set forth above.

161.

Plaintiffs have been damaged by IRA Defendants material breaches of duty in an amount to be shown at the trial of this matter.

COUNT EIGHT
NEGLIGENT REPRESENTATION

162.

Paragraphs 1 to 121 are incorporated herein by reference.

163.

IRA Defendants had a duty to Plaintiffs to provide accurate information. IRA Defendants have made negligent representations to Plaintiffs.

164.

In the course of their business, Investment Advisor Defendants made representations to Plaintiffs in which they supplied false information.

165.

Investment Advisor Defendants made these untrue representations for the guidance of Plaintiffs, and Plaintiffs justifiably relied on these false representations.

166.

IRA Defendants did not exercise reasonable care or competence in obtaining the accuracy of the information set forth in the Material Representations and untrue representation of Investment Advisors Defendants despite IRA Defendants' fiduciary obligations to the Plaintiffs and the affiliate relationship between Trust, SIB and SG.

167.

IRA Defendants' failed to supervise the activities of Investment Advisor Defendants in representing the interest of the Trust. The negligence of the IRA Defendants in failing to supervise the Investment Advisor Defendants or ascertain the accuracy of the information represented by Investment Advisor Defendants has caused damage to Plaintiffs in an amount to be shown at the trial of this matter.

COUNT NINE
BREACH OF FIDUCIARY DUTY

168.

Paragraphs 1 to 121 are incorporated herein by reference.

169.

Plaintiffs show that IRA Defendants have breached the fiduciary duties owed to Plaintiffs by IRA Defendants.

170.

The relationship of trust and confidence between Plaintiffs and IRA Defendants gave rise to a fiduciary duty on the part of IRA Defendants. IRA Defendants therefore owed a duty to Plaintiffs to act fairly and in the utmost good faith in all of their transactions with Plaintiff, to make full and fair disclosure of all material facts to Plaintiff, not to take advantage of their relationship with the Plaintiffs for personal gain, and to act openly and honestly regarding their transactions with Plaintiffs, and to advise Plaintiffs of any risk that becomes known to IRA Defendants during the course of the investment.

171.

IRA Defendants, and each of them, had during the relevant period a duty to use due care and protect Plaintiffs from injury, which included, among other things, a duty to verify, ensure, and adequately investigate the truthfulness and accuracy of the statements they made, as well as to refrain from disseminating false and misleading statements.

172.

As set forth above, the Trust, as custodial trustee, obligated itself to, inter alia: perform administrative reviews of investments' take custody of investments; execute subscription agreements only upon a review of the investment and a determination of investor suitability in accordance with then-current regulations; review and have on file Private Placement Memoranda; timely and accurately report customer' holdings and the accurate value thereof to both customers; and to enforce the rights and remedies available to holders of SIB CD's. The Trust and IRA Defendants by and through the conduct of the named defendants and its other agents, breached one or more of these duties in its dealings with respect to the SIB CD's.

173.

IRA Defendants breached their fiduciary duty by acting in a reckless manner in failing to determine the accuracy of the Material Representations and in failing to disclose certain information relating to the investigations of the state of Louisiana at the time the credit worthiness of the SIB CD's presented an issue to OFI.

174.

A fiduciary cannot serve two masters—the Stanford Group and the Plaintiffs. IRA Defendants violated their fiduciary duty when they failed to disclose their conflict of interest and divided loyalty at the time of the OFI orders based upon their loyalty to SIB and SG verses their loyalty to the Plaintiffs as customers of the Trust. IRA Defendants made a decision not to disclose this information to Plaintiffs so that the operation of SIB, SG and the

Trust would not adversely affect the financial operation of the Trust and SG.

175.

Had Plaintiffs known this information, the Trust could have been instructed to liquidate the investments. As a result of the conflict of interest and foregoing breaches of fiduciary duty by IRA Defendants, Plaintiffs are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT TEN
UNFAIR TRADE PRACTICES
(La. Rev. Stat. 4 51:1401, *et seq.*)

176.

Paragraphs 1 to 121 are incorporated herein by reference.

177.

Based upon the above allegations, IRA Defendants have violated the Louisiana Unfair Trade Practices Act, La. Rev. Stat. § 51:1401, *et seq.* (the "Act"), and such actions constitute deceptive trade practices within the meaning of the Act.

178.

Accordingly, Plaintiffs are entitled to damages under the Act and are entitled to reasonable attorney fees, as provided for therein.

COUNT ELEVEN
VIOLATION OF THE LOUISIANA SECURITIES ACT

179

Paragraphs 1 to 121 are incorporated herein by reference.

180.

This allegation is pled in the alternative, and only arises in the event that it is shown that the conduct of IRA Defendants was not negligent, but the representations made were not in good faith and were made with the reckless disregard for the truth.

181.

Pleading in the alternative, Plaintiffs would show that Investment Advisor Defendants have violated the Louisiana Securities Law, La. R. S. 51:701, *et seq*. IRA Defendant have liability under the Louisiana Securities Law based upon Section 714(B).

182.

All Investment Advisor Defendants sold securities to Plaintiffs, within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Law. Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of material facts, which made their statements misleading in the light of the circumstances in which they were made. As a participant n the offering, and knowledge of the process, IRA Defendants made no attempt to determine the accuracy of the information that was being represented by Investment Advisor Defendants or to determine what information was omitted from the offering documents.

183.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Law.

184.

In addition, the Trust and the IRA Defendants participated in the sale of securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana. IRA Defendants and Trust Company participated in the sale of securities to Plaintiffs who did not meet the non-public offering requirements who were not sophisticated investors.

185.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. IRA Defendants are liable based upon Section 714 (A) and (B) of the Louisiana Securities Law. IRA Defendants made no attempt to inquire whether the trust was assisting in the marketing of the unregistered securities which would have required SIB to disclose much more extensive information concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law.

186.

Plaintiffs relied on the foregoing material representations and/or omissions to their detriment.

187.

IRA Defendants participated, directly and indirectly, in the preparation, dissemination of written offering documents, promotional materials, investor and other correspondence, and oral presentations, in the solicitation of the IRA accounts of the Plaintiffs which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts

necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

188.

IRA Defendants could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) .of the Louisiana Securities Act.

189.

In accordance with Section 712(b) of the Louisiana Securities Act, every executive officer, or director of such person liable under 714(A)or every person occupying a similar status or performing similar functions, who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist.

190.

IRA Defendants are executive officers and directors of the Trust Company which is a person liable under 712(A). Further, the IRA Defendants could have, in the exercise of reasonable care, determined the existence of the facts set forth in paragraphs 1 to 121, or in the alternative, determine the omission of certain facts that was making the offering of the SIB CD's misleading.

191.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs has sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter.

COUNT TWELVE
INSURANCE AND FIDELITY
BOND COVERAGE

192.

Paragraphs 1 to 121 are incorporated herein by reference.

193.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided errors and omissions liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the errors and omissions liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

194.

At all or relevant times Certain Underwriters at Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183 provided directors and officers liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the directors and officers liability policies provides coverage for damages to

Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

195.

At all or relevant times ABC Bond Company provided fidelity bond coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective fidelity bonds Further, each of the fidelity bonds provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

196.

At all or relevant times RST Insurance Companies provided comprehensive general liability coverage for IRA Defendants and Investment Advisor Defendants. Each was an insured under the respective policy or policies of insurance. Further, each of the comprehensive general liability policies provides coverage for damages to Plaintiffs caused by the actions and inactions of IRA Defendants and Investment Advisor Defendants.

197.

Based upon information and belief, the policies and fidelity bond(s) issued by the Insurers provide coverage for damages caused the actions and inactions of Investment Advisor Defendants and IRA Defendants all as set forth in paragraphs 1 to 121 of this Petition.

198.

The negligent actions and inactions of Investment Advisor Defendants and IRA Defendants constitute

multiple occurrences under the policies of insurance and fidelity bond(s) issued by the Insurers.

199.

The policies of insurance issued by the policies of insurance and fidelity bond(s) issued by the Insurers do not exclude damages caused by the actions and inactions of Investment Advisor Defendants and IRA Defendants.

200.

The actions and inactions of the Investment Advisor Defendants and IRA Defendants have caused damages during the policy terms of the policies of insurance issued by policies of insurance and fidelity bond(s) issued by the Insurers.

201.

As a result, Insurers are liable for all foreseeable and unforeseeable damages, direct or indirect, consequential, attorney's fees, loss of income, interest, or diminution in value caused by any of the Investment Advisor Defendants and IRA Defendants.

SEI (Count Thirteen)

COUNT THIRTEEN
VIOLATION OF THE LOUISIANA SECURITIES ACT

202.

Paragraphs 1 to 121 are incorporated herein by reference.

203.

Investment Advisor Defendants and IRA Defendants have violated the Louisiana Securities

Law, La. R.S. 51:701, *et seq.* SEI has liability under the Louisiana Securities Law based upon Section 714(B).

204.

All Investment Advisor Defendants sold securities to Plaintiffs, within the meaning of the terms "sale" and "security" as defined in Section 702 of the Louisiana Securities Law. Investment Advisor Defendants sold these securities by means of untrue statements of material fact and/or omissions of material facts, which made their statements misleading in the light of the circumstances in which they were made. As a participant n the offering, and knowledge of the process, SEI made no attempt to determine the accuracy of the information that was being represented by Investment Advisor Defendants or to determine what information was omitted from the offering documents.

205.

These misrepresentations and omissions were in violation of Section 712 of the Louisiana Securities Law.

206.

In addition, the Trust and SEI participated in the sale of securities that were not registered in accordance with the law of the state of Louisiana and were not subject to a private placement exemption under the laws of the state of Louisiana. SEI and the Trust participated in the sale of securities to Plaintiffs who did not meet the non-public offering requirements who were not sophisticated investors.

207.

The failure to register was in violation of Sections 705 and 712 of the Louisiana Securities Law. SEI is liable based upon Section 714 (A) and (B) of the Louisiana Securities Law. SEI made no attempt to inquire whether the trust was assisting in the marketing of the unregistered securities which would have required SIB to disclose much more extensive information concerning its operation as set forth in Section 705(C) of the Louisiana Securities Law.

208.

Plaintiffs relied on the foregoing material representations and/or omissions to their detriment.

209.

SEI participated, directly and indirectly, in the preparation, dissemination of written offering documents, promotional materials, investor and other correspondence, and oral presentations, in the solicitation of the IRA accounts of the Plaintiffs which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

210.

SEI could have discover all of the misrepresentations and omissions by exercising the requisite due care require under 714(B) of the Louisiana Securities Act.

211.

In accordance with Section 712(b) of the Louisiana Securities Act, every company who participates in any material way in the sale is liable jointly and severally with and to the same extent as the person liable under 714(A) of the unless the person whose liability arises under this Subsection sustains the burden of proof that he did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which liability is alleged to exist. Based upon the role of SEI, SEI participated in the offering in a material way based upon the allegations set forth herein and is jointly and severally liable.

212.

SEI could have, in the exercise of reasonable care, determined the existence of the facts set forth in Paragraphs 1 to 121 or in the alternative, determine the omission of certain facts that was making the offering of the SIB CD's misleading.

213.

SEI, in the course of its business relationships with SG and the Trust, made material representations to Plaintiffs on a monthly and quarterly basis based upon the value of the SIB CD's. SEI and its employees and agents knowingly made the misrepresentations as to the value of the SIB CD's, and/or recklessly made the representations contained in said reports as positive assertions without any knowledge of their truth. Acting on behalf of SG and the Trust and at its behest, SEI created and transmitted monthly and quarterly reports to each Plaintiff with the intention that investors like Plaintiffs act upon the

representations by investing in, or continuing to maintain investments in, SIB CD's. Plaintiffs received the reports created and transmitted by SEI and justifiably relied upon them and, based upon them and the information provided by SG and Trust, formed the belief that the SIB CD's were legitimate investments and valued correctly. As a direct and proximate result of Plaintiffs' reliance on SEI's fraudulent misrepresentations, Plaintiff suffered damages, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

214.

As a result of the foregoing violations of the Louisiana Securities Act, Plaintiffs has sustained actual damages and are entitled to actual damages in an amount to be shown at the trial of this matter.

DAMAGES OWING BY DEFENDANTS

215.

Plaintiffs have suffered substantial financial injury as a direct, foreseeable and proximate result of Defendants breach of the duties, based upon the accounts alleged herein. In addition to the general damages flowing directly from these breaches, the Plaintiff's are entitled to recover consequential, incidental and special damages, lost profits, lost opportunities and other economic damages. Whereas almost all members of the Plaintiffs are older adults, who are no longer gainfully employed, their prospects of replacing the retirement monies lost are virtually nonexistent-leaving Plaintiffs with substantially reduced means for their continued sustenance. Thus, as a consequential and proximate

result of their financial injuries, Plaintiffs have experienced, and continue to experience, severe emotional distress in the form of depression, fear, anxiety, worry, grief, loss of sleep, and strokes, and are entitled to recover for such non-economic consequential damages, according to proof at trial Additionally, Plaintiffs' emotional distress has caused and is continuing to cause them to suffer additional financial losses as well, according to proof at trial.

216.

Plaintiffs have suffered substantial financial injury as a direct, foreseeable and proximate result of the Stanford Trust' contractual breaches, as alleged herein. In addition to the general damages flowing directly from these breaches, the Plaintiffs are entitled to recover consequential, incidental and special damages, lost profits, lost opportunities, and other economic damages.

JURY DEMAND

217.

Plaintiffs demand trial by jury of all issues so triable.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, pray for the following:

A. that Defendants be cited to appear and answer;

B. that, upon trial on the merits, Plaintiffs recover actual damages;

C. that, upon trial on the merits, Plaintiffs recover attorneys' fees, prejudgment interest, post judgment interest, costs of court, and such other and

further relief to which Plaintiffs may be justly entitled; and

D. for all other equitable and legal relief as provided by law.

Respectfully Submitted,

PREIS GORDON, APLC

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* * *

APPENDIX I

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JAMES ROLAND, et al., **Plaintiffs,** **v.** **JASON GREEN, et al.,** **Defendants.**	**NO. 3:09 CV 676 JVP-SCR**

SEI INVESTMENTS COMPANY'S STATEMENT OF CONSENT TO REMOVAL AND NOTICE SETTING FORTH INDEPENDENT BASIS FOR REMOVAL

Defendant SEI Investments Company ("SEI") hereby gives notice that it consents to the August 21, 2009 removal of this matter from the 19th Judicial District Court, Parish of East Baton Rouge. In addition, SEI hereby sets forth an additional, independent basis for removal of this action. In support thereof, SEI represents:

Procedural Background

1. Plaintiffs filed the above-captioned matter in the 19th Judicial District Court, Parish of East Baton Rouge, in the State of Louisiana, on August 14, 2009. Plaintiffs' counsel simultaneously filed the case captioned Farr, et al. v. Green, et al. ("Farr"), currently pending in the Middle District of Louisiana, No. 09-678.

2. Along with SEI, these matters named numerous other defendants. Roland, et al. v. Green, et al. ("Roland"), No. 09-676, names as defendants twenty-two individuals, ten "John Does," Stanford Trust Company, and four insurance companies. Farr names as defendants twenty-seven individuals, ten "John Does," Stanford Trust Company, and four insurance companies. Roland and Farr have a total overlap of twenty-seven defendants: twenty-one individuals, SEI, Stanford Trust Company, and four insurance companies are named in both actions.

3. On August 21, 2009, defendants Grady Layfield, Hank Mills, and John Schwab ("Removing Defendants") removed both Farr and Roland to this Court.

4. At the time the Original Notice was filed by the Removing Defendants, the docket in this matter reflected that no defendants had been served, including SEI.

5. Because no defendant had been served, the Removing Defendants were not required to and did not obtain the consent of any other defendant for removal. See Removing Defendants' Notice of Removal in Farr ("Farr Original Notice") (attached as Ex. A hereto); Removing Defendants' Notice of Removal in Roland ("Roland Original Notice") (attached as Ex. B hereto).

6. On September 17, 2009, plaintiffs in both Farr and Roland filed identical motions to transfer the two cases from the docket of this Court to the docket of Judge Brady.

7. On September 18, 2009, plaintiffs in both Farr and Roland filed identical motions to remand.

SEI's Consent To Removal

8. Although its consent to removal was not required because it had not been served, SEI nonetheless consents to the removal of this matter to this Court.

9. Although SEI still has not been served, it is entitled to remove this matter.[1]

The Original Notice

10. The Roland Original Notice is based on certain orders issued in litigation ongoing in the Northern District of Texas.

11. In February 2009, the Securities and Exchange Commission ("SEC") filed a complaint in the Northern District of Texas against, inter alia, Stanford International Bank ("SIB"), the Stanford Group Companies, Allen Stanford, James Davis, and Laura Pendergest-Holt. See Complaint in SEC v. Stanford Int'l Bank, et al., No. 09-298 (attached as Ex. B to the Original Notices) (attached as Ex. C hereto for the Court's convenience). Subsequently, the SEC filed an amended complaint. See First Amended Complaint in SEC v. Stanford Int'l Bank, et al., No. 09-298 (attached as Ex. D hereto). The SEC contended that defendants in the Texas case fraudulently sold "certificates of deposits" that were supposedly backed by "liquid" financial instruments when, in fact, most of the monies invested were misappropriated or invested in inappropriate financial instruments. See, e.g., id. ¶¶ 3, 21 ("SIB

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[1] It remains true, as of the date of this filing, that the docket reflects no service on any defendant. Thus, no additional consents are required for SEI to set forth its own independent basis for removal.

aggregated customer deposits, and then purportedly re-invested those funds in a 'globally diversified portfolio' of assets"), 31-35 (describing allegedly fraudulent representations by which SIB sold CDs), 44-48 (contending that SIB misrepresented the liquidity of its investments). The SEC's complaint sets forth various federal securities claims against the named defendants in that action. Id. ¶¶ 81-103.

12. Simultaneously with filing its complaint, the SEC requested a temporary restraining order. The Northern District of Texas granted this request and appointed a receiver who assumed "exclusive jurisdiction" and took possession of assets. See Order of Feb. 16, 2009 (attached as Ex. D to the Original Notices) (attached as Ex. E hereto for the Court's convenience). The February 16, 2009 Order enjoined actions naming various Stanford entities as well as actions that would affect the receivership estate. Id. ¶ 7.

13. The Roland Original Notice removed this matter based on federal question jurisdiction. In particular, the Roland Original Notice argued that this matter raises questions regarding the authority of the Northern District of Texas and of the receiver that can only be resolved by application of federal law. See Roland Original Notice ¶¶ 17-20.

This Petition Is Subject To Removal Under The Securities Litigation Uniform Standards Act ("SLUSA")

14. Apart from any basis for federal jurisdiction set forth in the Roland Original Notice, there is a separate and independent basis for removal of this action. In particular, taken as true for purposes of

removal only,[2] this Petition sets forth claims that are subject to removal under the Securities Litigation Uniform Standards Act ("SLUSA").

15. SLUSA provides that any "covered class action brought in any State court involving a covered security . . . shall be removable to the Federal district court for the district in which the action is pending." 15 U.S.C. § 77p(c); 15 U.S.C. § 78bb(f)(2).[3]

16. The Middle District of Louisiana is the district court for the district in which the original state court action was filed. 15 U.S.C. § 77p(c).

17. An action is subject to SLUSA removal if (1) it involves a "covered class action"; (2) it is based on state law; (3) it pertains to a purchase or sale of a "covered security"; and (4) in connection with that purchase or sale, plaintiffs allege that defendants misrepresented or omitted a material fact or used or employed a manipulative or deceptive device or

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[2] SEI does not, in fact, agree with the allegations made by plaintiffs, which are in many instances factually incorrect. Nor, by accepting the allegations as true for present purposes, does SEI waive any substantive, factual, or procedural arguments. Rather, for purposes of removal, SEI simply relies on the fact that relevant allegations appear in the Roland Petition. See, e.g., Tedder v. FMC Corp., 590 F.2d 115, 116 (5th Cir. 1979) ("Whether the case was properly removed is determined by reference to the allegations in a plaintiff's state court pleading.").

[3] SLUSA amends the Securities Act of 1933 and the Securities & Exchange Act of 1934 in "substantially identical ways." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. 71, 82 (2006). SEI has cited to the provisions of the Securities Act in this document to avoid duplication, but removal is warranted under the provisions of both the Securities Act and the Exchange Act.

contrivance. In re Enron Corp. Sec. Derivative & ERISA Litig., 535 F.3d 325, 338 (5th Cir. 2008).

Roland Constitutes A "Covered Class Action" Separately And Taken Together

18. This matter is a "covered class action" within the meaning of SLUSA because it is part of a "group of lawsuits filed in or pending in the same court and involving common questions of law or facts in which . . . damages are sought on behalf of more than 50 persons; and . . . the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose." 15 U.S.C. § 77p(f)(2)(A)(ii).

19. Roland names seventeen individual plaintiffs, Petition ¶¶ 1(A)-(Q), many of whom purport to act on behalf of other individuals. See, e.g., id. ¶ 1(F) (stating that plaintiff Thomas Bowden purports to act on his own behalf and on behalf of a trust and an IRA account).[4] When the number of plaintiffs is added to those making parallel allegations in Farr, however, there are more than fifty persons. Farr names seventy-two individual plaintiffs. Farr Petition ¶¶ 1(A)-1(TTT).

20. Moreover, each individual plaintiff's claim is premised on losses allegedly incurred following investment of monies with Stanford Group and Stanford Trust. Roland Petition ¶¶ 6-8; see also id. ¶ 9 (contending that "Plaintiffs misunderstood or simply did not know the risks inherent in an investment in the SIB CDs").

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[4] When considering the number of others on whose behalf the named plaintiffs purport to act, the actual number of plaintiffs increases to more than thirty.

21. The Roland and Farr actions are functionally proceeding as a single action,[5] as evidenced by the overlap in defendants and claims, the filing of identical documents in the two cases on the same date, and the identity of plaintiffs' counsel. Both Petitions were filed in state court on the same date by the same plaintiffs' counsel. See Roland Original Notices ¶ 7; see also Roland Petition at page 49; Farr Petition at page 59. Although the Farr Petition includes six defendants not named in the Roland Petition, both actions name twenty-seven identical defendants.[6] Both actions are based on claims relating to the wrongful sale of securities issued by SIB. Indeed, aside from differences in describing the plaintiffs and the defendants, the content of the two Petitions is virtually identical. Compare Farr Petition ¶¶ 12-76, with Roland Petition ¶¶ 10-74 (containing largely identical allegations setting forth conduct, including identical supposed "misrepresentations"); Farr Petition ¶¶ 77-103, with Roland Petition ¶¶ 75-99 (containing allegations that are largely identical except for Roland's inclusion of the phrase "and Trust accounts" or similar language on certain allegations); Farr Petition ¶¶ 104-17, with Roland Petition ¶¶ 100-18

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[5] SEI has filed a motion to consolidate the two actions.

[6] In addition to SEI, Roland and Farr both name Tiffany Angelle, Danny Bogar, Jack Bruno, Jay Comeaux, James Fontenot, Jason Green, Gary Haindel, Charles Jantzi, Joe Klingen, Grady Layfield, Rhonda Lear, Hank Mills, Russ Newton, Zack Parrish, Timothy E. Parsons, J.D. Perry, John Schwab, Lena Stinson, Alvaro Trullenque, Jim Weller, Bernard Young, John Does 1-10, Stanford Trust Company, Certain Underwriters At Lloyd's of London in Syndicates 2987, 1866, 1084, 1274, 4000, 1183, XYZ Insurance Company, ABC Bond Company, and RST Insurance Company.

(containing largely identical allegations setting forth SEI's supposed conduct, except that Roland occasionally includes the phrase "and Trust accounts"). Finally, with the exception of the names of some of the parties, the remand motions filed in the Roland and Farr actions are identical, as are the motions to transfer the two actions to the docket of Judge Brady.

22. Under these circumstances, the two actions should be viewed as proceeding as a "single" action within the meaning of SLUSA. Enron, 535 F.3d at 340 (finding actions were "proceeding as a single action" under SLUSA when plaintiffs, inter alia, filed "nearly identical complaints" and "joint motions").

23. Thus, the first requirement for SLUSA removal is satisfied.

All Claims Are Purportedly Brought Under State Law

24. All claims in this action are purportedly based on state law. Roland Petition ¶¶ 123-211. Indeed, the remand motion specifically so states. See Memorandum in Support of Motion to Remand at 4. Thus, the second requirement for SLUSA removal is satisfied.

The Claims Relate To The Purchase Or Sale Of A "Covered Security"

25. The allegations in both Petitions pertain to a "covered security" within the meaning of SLUSA. SLUSA defines a covered security as one "issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940." 15 U.S.C. §

77r(b)(2); see also 15 U.S.C. § 77p(f)(3) (cross-referencing 15 U.S.C. § 77r(b)).

26. The Petitions specifically contend that SIB issued the securities in question. Farr Petition ¶ 12; Roland Petition ¶ 10 (describing "SIB-issued securities, marketed as certificates of deposit"). The Petitions also allege that SIB and Stanford Trust were impermissibly "operating as an investment company selling unregistered securities from, by and through Louisiana." Farr Petition ¶ 108; Roland Petition ¶ 104. Plaintiffs allege that SEI failed to inquire as to whether this constituted a "public offering." Farr Petition ¶ 111; Roland Petition ¶ 107; see also Farr Petition ¶¶ 38 (alleging that "in its SIB CD marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading 'Depositor Security,' that the bank focuses on 'maintaining the highest degree of liquidity . . . ' and that the bank's assets are 'invested in a well-diversified portfolio of highly marketable securities'"), 114 (contending that Stanford entities were operating as an "illegal hedge or mutual fund"); Roland Compl. ¶¶ 36, 110 (same). In short, taking plaintiffs' own allegations as true, their gist is that SIB impermissibly failed to register as an investment company. See also SEC Amended Compl. ¶ 101 (alleging that SIB improperly failed to register as an investment company).

27. Plaintiffs' contention that SIB issued securities while wrongfully failing to register is sufficient to bring those securities within the meaning of "covered securities." See Goldman v. McMahan, Brafman, Morgan & Co., et al., No. 85-2236, 1987 WL 12820, at *16-18 (S.D.N.Y. June 17, 1987) (in claim brought by private plaintiffs, holding

that company was subject to the Investment Company Act, even if it had failed to register); Krome v. Merrill Lynch & Co., Inc., 637 F. Supp. 910, 917 (S.D.N.Y. 1986) ("Failure to register . . . does not insulate a company from the other provisions of the ICA. To hold otherwise would subject firms who do not register to less stringent regulation than those who do register.").

28. The Petitions are premised on allegations relating to the "purchase or sale" of securities under SLUSA. The Petitions are replete with allegations that plaintiffs purchased "securities," as is the single count against SEI for a purported violation of the Louisiana Securities Act. Farr Petition ¶¶ 204-09 (specifically alleging that SEI "participated in the sale of securities that were not registered"); see also id. ¶ 111 (contending that the "investing public in Louisiana" was "being offered securities" and that SEI wrongfully failed to investigate as to whether this was a public offering); Roland Petition ¶¶ 201-04, 107 (same).

29. More generally, throughout the Petitions, plaintiffs contend that, although the investments they purchased were typically marketed as CDs, "the CDs were not certificates of deposit as such term is known in the financial industry. . . . [I]n fact these were nothing more than highly speculative debt instruments similar to junk bonds." Farr Petition ¶ 21; Roland Petition ¶ 19. See also Farr Petition ¶¶ 21 (contending that SIB was "in the best of circumstances . . . a hedge fund, and in the worst of circumstances, . . . Allen Stanford's private bank account"), 52 (same), 22 (stating that SIB marketed the CDs by touting the "liquidity of its investment portfolio," including its "'well diversified portfolio of

highly marketable securities issued by stable governments'"), 38 (alleging that SIB marketed its CDs by emphasizing the liquidity of the underlying investments), 40 (contending that SIB's portfolio was not diversified but was instead invested in "illiquid investments or no assets at all"); Roland Petition ¶¶ 19, 20, 36, 38 (same); see also 15 U.S.C. § 77b(a)(1) (defining "security" to include any notes, bonds, "certificate of deposit for a security," any "group or index of securities" or, "in general, any interest or instrument commonly known as a 'security'").

30. Because the Petitions set forth claims related to the purchase or sale of a covered security, the third requirement for SLUSA removal is satisfied.

The Petitions Allege Misrepresentations And Omissions

31. Both Petitions specifically allege "misrepresentations and omissions." See, e.g., Farr Petition ¶ 209 ("SEI participated, directly and indirectly, in the preparation [and] dissemination of written offering documents . . . which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts"), ¶ 213 (alleging that SEI "made material representations to Plaintiffs" and "knowingly made the misrepresentations as to the value of the SIB CD's"); Roland Compl. ¶¶ 206, 210 (same). Thus, the fourth requirement for SLUSA removal is satisfied.

Conclusion

32. In addition to any bases for federal jurisdiction set forth in the Roland Original Notice, the Roland Petition, particularly viewed in light of the essentially identical allegations in Farr, satisfies each separate element required for SLUSA removal. Thus, Roland is properly before the Middle District of Louisiana.

October 8, 2009 Respectfully submitted,

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* * *

APPENDIX J

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LEAH FARR, et al., **Plaintiffs,** **v.** **JASON GREEN, et al.,** **Defendants.**	**NO. 3:09 CV 678 JVP-DLD**

SEI INVESTMENTS COMPANY'S STATEMENT OF CONSENT TO REMOVAL AND NOTICE SETTING FORTH INDEPENDENT BASIS FOR REMOVAL

Defendant SEI Investments Company ("SEI") hereby gives notice that it consents to the August 21, 2009 removal of this matter from the 19th Judicial District Court, Parish of East Baton Rouge. In addition, SEI hereby sets forth an additional, independent basis for removal of this action. In support thereof, SEI represents:

Procedural Background

1. Plaintiffs filed the above-captioned matter in the 19th Judicial District Court, Parish of East Baton Rouge, in the State of Louisiana, on August 14, 2009. Plaintiffs' counsel simultaneously filed the case captioned Roland, et al. v. Green, et al.

("Roland"), currently pending in the Middle District of Louisiana, No. 09-676.[1]

2. Along with SEI, this matter names numerous other defendants: twenty-seven individuals, ten "John Does," Stanford Trust Company, and four insurance companies.

3. On August 21, 2009, defendants Grady Layfield, Hank Mills, and John Schwab ("Removing Defendants") removed this matter to this Court.

4. At the time the Original Notice was filed by the Removing Defendants, the docket in this matter reflected that no defendants had been served, including SEI.

5. Because no defendant had been served, the Removing Defendants were not required to and did not obtain the consent of any other defendant for removal. See Removing Defendants' Notice of Removal ("Original Notice") (attached as Ex. A hereto).

6. On September 18, 2009, plaintiffs filed a motion to remand this action to state court.

SEI's Consent To Removal

7. Although its consent to removal was not required because it had not been served, SEI

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[1] SEI describes the substantial overlap between the Farr and Roland cases in its Opposition to Plaintiffs' Motion to Remand filed in Roland. SEI will not burden the Court by repeating that description here, but incorporates that discussion by reference to the extent it is relevant to the analysis of the appropriateness of removal in the Farr case. Because of the overlap in the cases, SEI has filed separately a motion to consolidate Farr and Roland.

nonetheless consents to the removal of this matter to this Court.

8. Although SEI still has not been served, it is entitled to remove this matter.[2]

The Original Notice

9. The Original Notice is based on certain orders issued in litigation ongoing in the Northern District of Texas.

10. In February 2009, the Securities and Exchange Commission ("SEC") filed a complaint in the Northern District of Texas against, inter alia, Stanford International Bank ("SIB"), the Stanford Group Companies, Allen Stanford, James Davis, and Laura Pendergest-Holt. See Complaint in SEC v. Stanford Int'l Bank, et al., No. 09-298 (attached as Ex. B to the Original Notice) (attached as Ex. B hereto for the Court's convenience). Subsequently, the SEC filed an amended complaint. See First Amended Complaint in SEC v. Stanford Int'l Bank, No. 09-298 (attached as Ex. C hereto). The SEC contended, inter alia, that defendants in the Texas case fraudulently sold "certificates of deposits" that were supposedly backed by "liquid" financial instruments when, in fact, most of the monies invested were misappropriated or invested in inappropriate financial instruments. See, e.g., id. ¶¶ 3, 21 ("SIB aggregated customer deposits, and then purportedly re-invested those funds in a 'globally diversified portfolio' of assets[.]"), 31-35 (describing

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[2] It remains true that, as of the date of this filing, the docket reflects no service on any defendant. Thus, no additional consents are required for SEI to set forth its own independent basis for removal.

allegedly fraudulent representations by which SIB sold CDs), 44-48 (contending that SIB misrepresented the liquidity of its investments). The SEC's complaint sets forth various federal securities claims against the named defendants in that action. Id. ¶¶ 81-103.

11. Simultaneously with filing its complaint, the SEC requested a temporary restraining order. The Northern District of Texas granted this request and appointed a receiver who assumed "exclusive jurisdiction" and took possession of assets. See Order of Feb. 16, 2009 (attached as Ex. D to the Original Notice) (attached as Ex. D hereto for the Court's convenience). The February 16, 2009 Order enjoined actions naming various Stanford entities as well as actions that would affect the receivership estate. Id. ¶ 7.

12. The Original Notice removed this matter based on federal question jurisdiction. In particular, the Original Notice argued that this matter raises questions regarding the authority of the Northern District of Texas and of the receiver that can only be resolved by application of federal law. See Original Notice ¶¶ 17-20.

This Petition Is Subject To Removal Under The Securities Litigation Uniform Standards Act ("SLUSA")

13. Apart from any basis for federal jurisdiction set forth in the Original Notice, there is a separate and independent basis for removal of this action. In particular, taken as true for purposes of this removal

only,[3] this Petition sets forth claims that are subject to removal under the Securities Litigation Uniform Standards Act ("SLUSA").

14. SLUSA provides that any "covered class action brought in any State court involving a covered security . . . shall be removable to the Federal district court for the district in which the action is pending." 15 U.S.C. § 77p(c); 15 U.S.C. § 78bb(f)(2).[4]

15. The Middle District of Louisiana is the district court for the district in which the original state court action was filed. 15 U.S.C. § 77p(c).

16. An action is subject to SLUSA removal if (1) it involves a "covered class action"; (2) the action is based on state law; (3) it involves a purchase or sale of a "covered security"; and (4) in connection with that purchase or sale, plaintiffs allege that defendants misrepresented or omitted a material fact or used or employed a manipulative or deceptive

---

[3] SEI does not, in fact, agree with the allegations made by plaintiffs, which are in many instances factually incorrect. Nor, by accepting the allegations as true for present purposes, does SEI waive any substantive, factual, or procedural arguments. Rather, for purposes of removal, SEI simply relies on the fact that relevant allegations appear in the Petition. See, e.g., Tedder v. FMC Corp., 590 F.2d 115, 116 (5th Cir. 1979) ("Whether the case was properly removed is determined by reference to the allegations in a plaintiff's state court pleading.").

[4] SLUSA amends the Securities Act of 1933 and the Securities & Exchange Act of 1934 in "substantially identical ways." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit, 547 U.S. 71, 82 (2006). SEI has cited to the provisions of the Securities Act in this document to avoid duplication, but removal is warranted under the provisions of both the Securities Act and the Exchange Act.

device or contrivance. In re Enron Corp. Sec. Derivative & ERISA Litig., 535 F.3d 325, 338 (5th Cir. 2008).

Farr Constitutes A "Covered Class Action" Separately And Taken Together With Roland

17. This matter is a "covered class action" within the meaning of the statute because plaintiffs allege that "damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons . . . predominate over any questions affecting only individual persons or members." 15 U.S.C. § 77p(f)(2)(A). Farr names seventy-two individual plaintiffs. Petition ¶¶ 1(A)-1(TTT). Moreover, each individual plaintiff's claim is premised on losses allegedly incurred following investment of monies with Stanford Group and Stanford Trust. Id. ¶ 6; see also id. ¶ 11 (contending that "Plaintiffs misunderstood or simply did not know the risks inherent in an investment in the SIB CDs"). All claims are brought on behalf of all plaintiffs. Id. ¶¶ 122-214.

18. Thus, the first requirement for SLUSA removal is satisfied.

All Claims Are Purportedly Brought Under State Law

19. All claims in this action are purportedly based on state law. Petition ¶¶ 122-214; see also 15 U.S.C. § 77p(c). Indeed, the remand motion specifically so states. See Memorandum in Support of Motion to Remand at 4. Thus, the second requirement for SLUSA removal is satisfied.

The Claims Relate To The Purchase Or Sale Of A "Covered Security"

20. The allegations in the Petition pertain to a "covered security" within the meaning of SLUSA. SLUSA defines a covered security as one "issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940." 15 U.S.C. § 77r(b)(2); see also 15 U.S.C. § 77p(f)(3) (cross-referencing 15 U.S.C. § 77r(b)).

21. The Petition specifically contends that SIB issued the securities in question. Petition ¶ 12 (describing "SIB-issued securities, marketed as certificates of deposit"). The Petition also alleges that SIB and Stanford Trust were impermissibly "operating as an investment company selling unregistered securities from, by and through Louisiana." Id. ¶ 108. Plaintiffs allege that SEI failed to inquire as to whether this constituted a "public offering." Id. ¶ 111; see also id. ¶¶ 38 (alleging that "in its SIB CD marketing brochure, SIB emphasized the importance of the liquidity of the SIB CD, stating, under the heading 'Depositor Security,' that the bank focuses on 'maintaining the highest degree of liquidity . . . ' and that the bank's assets are 'invested in a well-diversified portfolio of highly marketable securities'"), 114 (contending that Stanford entities were operating as an "illegal hedge or mutual fund"). In short, taking plaintiffs' own allegations as true, their gist is that SIB impermissibly failed to register as an investment company. See also SEC Amended Compl. ¶ 101 (alleging that SIB improperly failed to register as an investment company).

22. Plaintiffs' contention that SIB issued securities while wrongfully failing to register is sufficient to bring those securities within the meaning of "covered securities." See Goldman v. McMahan, Brafman, Morgan & Co., et al., No. 85-2236, 1987 WL 12820, at *16-18 (S.D.N.Y. June 17, 1987) (in claim brought by private plaintiffs, holding that company was subject to the Investment Company Act, even if it had failed to register); Krome v. Merrill Lynch & Co., Inc., 637 F. Supp. 910, 917 (S.D.N.Y. 1986) ("Failure to register . . . does not insulate a company from the other provisions of the ICA. To hold otherwise would subject firms who do not register to less stringent regulation than those who do register.").

23. The Petition is premised on allegations relating to the "purchase or sale" of securities under SLUSA. The Petition is replete with allegations that plaintiffs purchased "securities," as is the single count against SEI for a purported violation of the Louisiana Securities Act. Petition ¶¶ 204-09 (specifically alleging that SEI "participated in the sale of securities that were not registered"); see also id. ¶ 111 (contending that the "investing public in Louisiana" was "being offered securities" and that SEI wrongfully failed to investigate as to whether this was a public offering).

24. More generally, throughout the Petition, plaintiffs contend that, although the investments they purchased were typically marketed as CDs, "the CDs were not certificates of deposit as such term is known in the financial industry. . . . [I]n fact these were nothing more than highly speculative debt instruments similar to junk bonds." Petition ¶ 21; see also id. ¶¶ 21 (contending that SIB was "in the

best of circumstances . . . a hedge fund, and in the worst of circumstances, . . . Allen Stanford's private bank account"), 52 (same), 22 (stating that SIB marketed the CDs by touting the "liquidity of its investment portfolio," including its "'well diversified portfolio of highly marketable securities issued by stable governments'"), 38 (alleging that SIB marketed its CDs by emphasizing the liquidity of the underlying investments), 40 (contending that SIB's portfolio was not diversified but was instead invested in "illiquid investments or no assets at all"); 15 U.S.C. § 77b(a)(1) (defining "security" to include any notes, bonds, "certificate of deposit for a security," any "group or index of securities" or, "in general, any interest or instrument commonly known as a 'security'").

25. Because the Petition sets forth claims related to the purchase or sale of a covered security, the third requirement for SLUSA removal is satisfied.

The Petition Alleges Misrepresentations And Omissions

26. Plaintiffs have alleged that there were "misrepresentations and omissions" of material fact in connection with the purchase or sale of a security. See, e.g., Petition ¶ 209 ("SEI participated, directly and indirectly, in the preparation [and] dissemination of written offering documents . . . which contained untrue statements of material facts and misrepresentations of material facts, and which omitted to state material facts..."), ¶ 213 (alleging that SEI "made material representations to Plaintiffs" and "knowingly made the misrepresentations as to the value of the SIB CD's").

Thus, the fourth requirement for SLUSA removal is satisfied.

Conclusion

27. In addition to any bases for federal jurisdiction set forth in the Original Notice, the Petition satisfies each separate element required for SLUSA removal. Thus, this matter is properly before the Middle District of Louisiana.

October 8, 2009 Respectfully submitted,

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* * *

Supreme Court, U.S.
FILED
MAY 3 - 2013
OFFICE OF THE CLERK

Nos. 12-79, 12-86, & 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP, PETITIONER,
v.
SAMUEL TROICE, ET AL.

WILLIS OF COLORADO INC., BOWEN, MICLETTE & BRITT, INC., AND SEI INVESTMENTS COMPANY, PETITIONERS,
v.
SAMUEL TROICE, ET AL.

PROSKAUER ROSE LLP, PETITIONER,
v.
SAMUEL TROICE, ET AL.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

JOINT APPENDIX VOLUME II of II
[Pages JA422 - JA777]

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Petitions for Writ of Certiorari Filed July 18, 2012
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APPENDIX K

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAMUEL TROICE, HORACIO MENDEZ, ANNALISA MENDEZ, PUNGA PUNGA FINANCIAL, LTD. individually and on behalf of a class of all others similarly situated	§	
Plaintiffs,	§	
VS.	§	**CIVIL ACTION NO. 3:09-cv-01600-F**
PROSKAUER ROSE, LLP, THOMAS V. SJOBLOM, P. MAURICIO ALVARADO, and CHADBOURNE & PARKE, LLP	§	
Defendants.	§	

PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

NOW COME PLAINTIFFS, SAMUEL TROICE, HORACIO MENDEZ, ANNALISA MENDEZ, and PUNGA PUNGA FINANCIAL, LTD., individually and on behalf of a class of all others similarly situated, (collectively hereinafter "Plaintiffs"), and file this their Second Amended Class Action

Complaint against Defendants, PROSKAUER ROSE, LLP, THOMAS V. SJOBLOM, P. MAURICIO ALVARADO and CHADBOURNE & PARKE, LLP (collectively hereinafter "Defendants"), and in support thereof would show the Court the following:

I. PREFACE

1.

This putative class action is filed in representation of a putative class of defrauded investor clients of Houston, Texas-based Stanford Financial Group ("Stanford Financial"). This action has been filed in this Court because it is related to Civil Action No. 309-CV-0298, *Securities & Exchange Commission v. Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management LLC, et al.*, in the United States District Court for the Northern District of Texas—Dallas Division (the "SEC Action"). This action alleges participation by these Defendants in the massive, ongoing investment fraud Ponzi scheme conspiracy perpetrated by the Stanford Financial Group and its principals from, by and through Texas that led to the intervention by the SEC in Texas and appointment of Ralph Janvey as Receiver.

PARTIES

2.

Plaintiff, SAMUEL TROICE, is a citizen of the Republic of Mexico residing in the Republic of Mexico.

3.

Plaintiff, HORACIO MENDEZ, is a dual citizen of the United States of America and Venezuela and is currently residing in Travis County, Texas.

4.

Plaintiff, ANNALISA MENDEZ, is a citizen of the United States of America and is currently residing in Travis County, Texas.

5.

Plaintiff, PUNGA PUNGA FINANCIAL, LTD., is a Panamanian company with its principal place of business in Mexico City, Mexico which is wholly owned and controlled by Mexican citizens from Mexico City, Mexico.

6.

Additionally, this case seeks certification of a class of all investors who purchased or held Certificates of Deposit and/or otherwise maintained investment accounts with Stanford International Bank Ltd. as of February 2009, and, in the alternative, seeks certification of (i) a class of Mexican investors who purchased or held Certificates of Deposit and/or otherwise maintained investment accounts with Stanford International Bank Ltd. as of February 2009; and (ii) a separate class of United States investors who purchased or held Certificates of Deposit and/or otherwise maintained investment accounts with Stanford International Bank Ltd. as of February 2009.

7.

Defendant Proskauer Rose, LLP, ("Proskauer") is a limited liability partnership organized under the

laws of the State of New York. Proskauer may be served with service of process by serving the Secretary of State by certified mail, return receipt requested, pursuant to Rules 106 and 108a of the Texas Rules of Civil Procedure. Proskauer may be served by serving its registered agent/chairman Allen I. Fagin at 1585 Broadway, New York, New York, 10036-8299.

8.

Defendant Thomas V. Sjoblom, ("Sjoblom") is an individual currently employed at Proskauer Rose, LLP at both the Washington D.C. and New York offices at 1001 Pennsylvania Avenue, NW Suite 400 South, Washington D.C. 20004-2533 and 1585 Broadway, New York, New York 10036-8299. Sjoblom may be served with service of process by serving the Secretary of State by certified mail, return receipt requested, pursuant to Rules 106 and 108a of the Texas Rules of Civil Procedure.

9.

Defendant P. Mauricio Alvarado, ("Alvarado") is an individual who resided in Texas during the time in questions but how is currently believed to be residing in Miami, Florida. Alvarado may be served with service of process by serving him at his place of residence at 3593 Royal Palm Avenue, Miami, Florida, 01331.

10.

Defendant Chadbourne & Parke, LLP, ("Chadborne") is a limited liability partnership organized under the laws of the State of New York. Chadbourne may be served with service of process by serving the Secretary of State by certified mail,

return receipt requested, pursuant to Rules 106 and 108a of the Texas Rules of Civil Procedure. Chadbourne may be served by serving its registered agent/general managing partner Charles K. O'Neill at 30 Rockefeller Plaza, New York, New York, 10112.

II. SUBJECT MATTER JURISDICTION

11.

This Court has original jurisdiction over this proceeding pursuant to 28 U.S.C. §1332(d)(2)(B) because this is a class action in which the amount in controversy exceeds $5,000,000.00 and is a class in which some members of the Plaintiff class are citizens and residents of the Republic of Mexico and all Defendants are citizens of a State within the United States.

III. PERSONAL JURISDICTION

12.

This Court has personal jurisdiction over the non resident Defendants under the Texas Long Arm Statute. Defendants have conducted continuous and systematic business in the State of Texas for many years and are therefore subject to general jurisdiction. Furthermore, as described herein, Defendants have engaged in specific jurisdiction contacts with the State of Texas, specifically with the Stanford Financial group headquartered in Houston, Texas, that give rise to Plaintiffs' causes of action, and therefore Defendants have done business and committed torts, in part, in the State of Texas. Since at least 2005 Defendants served as the attorneys for the Stanford Financial group headquartered in Houston, Texas, and in that capacity engaged in extensive contacts with Stanford

Financial personnel based in Houston, Texas, including the General Counsel of Stanford Financial, and Defendants traveled to Houston and Fort Worth, Texas to service said Texas-based client. In conjunction with the provision of their professional services to Stanford Financial, Defendants engaged in contacts with the State of Texas designed to assist and perpetuate the Stanford Ponzi scheme described herein, including obstructing an SEC investigation, as described herein. Based on their general and specific contacts with the State of Texas, Defendants have purposefully availed themselves of the privilege of conducting activities within Texas and have established minimum contacts with the State of Texas under the Long Arm Statute.

IV. VENUE

13.

Venue is mandatory in this Court pursuant to ¶9 of the Amended Order Appointing Receiver in the SEC Action.

V. FACTUAL BACKGROUND

A. The Stanford Financial Empire

14.

From the mid-1980s through February 2009, R. Allen Stanford ("Stanford"), a former gym owner from Mexia Texas, built a financial service empire that at its height boasted 30,000 customers in 130 countries allegedly managing $50 billion dollars in investment funds. The empire was comprised of over 140 companies from across the globe that operated under the brand name "Stanford Financial" with its worldwide headquarters located in Houston, Texas. The conglomeration of Stanford companies

(hereinafter collectively referred to as "Stanford Financial") included the main operating companies: Houston, Texas-based Stanford Group Company ("SGC") and Stanford Capital Management, LLC ("SCM"); Stanford International Bank ("SIB") and Stanford Trust (one in Louisiana and another in Antigua), all of which were controlled and managed from the United States, principally Houston, Texas. In Mexico, Stanford Financial operated under the names Stanford Group Mexico S.A. and Stanford Fondos S.A. de C.V., while in Venezuela Stanford Financial operated under the name Stanford Group Venezuela Asesores de Inversion, C.A.

15.

Begun initially as an offshore banking operation in the mid-1980s, Stanford Financial grew over the years into a full service financial services group, offering clients private banking and U. S.-based broker dealer and investment advisory services worldwide from its headquarters base in Houston, Texas. Stanford Financial gave all the appearances of a highly successful outfit, with lavish offices in some of the world's premier cities. Stanford himself made the Forbes' list of the richest people in the world with a personal fortune estimated at $2.2 billion.

16.

The most important facet underlying the Stanford Financial empire, and the key to its success and sustainability, was the carefully crafted Stanford Financial image. The Stanford Financial image was one of success, prestige, and, most importantly, safety and solidity. The Stanford Financial image was centered around and built upon money — the

money Stanford Financial received from its investor clientele. With the money it received from its clients, Stanford Financial was able to project an image of success and solidity. From the marble and mahogany of the Houston headquarters, to the huge bonuses paid to lure and retain top producers, to the $500 lunches for clients in Mexico City, to the helicopters and private jets that flew the Stanford Financial executives around, Stanford Financial oozed money, thus lending an air of legitimacy to the Stanford image.

17.

Part of the Stanford legend was that Stanford Financial was a continuation of the insurance business begun by Stanford's grandfather, Lodis Stanford, during the Great Depression. Based on that connection, Stanford Financial boasted to the world that it had over 70 years history of growing and protecting people's wealth. Of course, this legend, like most of the Stanford image,[1] was false, as Stanford's father sold the old insurance business in 1983. Yet Stanford continued to foster that image of decades of family tradition and work ethic as late as a 2008 edition of the *Stanford Eagle* magazine.

18.

Charitable giving and sponsorships of sporting events and teams, as well as massive political contributions, constituted additional pillars supporting the Stanford Financial image. As with everything else, Stanford spent lavishly on

---

[1] Stanford's claim to be a descendent of the founder of Stanford University, a claim which he disseminated widely, was also false.

philanthropic endeavors, giving to hospitals, theaters and museums, and sponsoring sports teams and celebrities such as the Miami Heat and Vijay Singh, all with the objective, once again, of sustaining the Stanford Financial image. Stanford made a huge splash in the world cricket establishment in particular. Stanford also gave generously to political campaigns and urged his employees to do the same as well, to the tune of millions of dollars.

19.

Stanford Financial obtained the money it needed to perpetuate its image from one primary source: the sale of Certificates of Deposit from the Antiguan offshore bank wholly owned and controlled by Stanford himself — SIB. Clients who were introduced to the Stanford Financial group quickly found out that the main financial product being peddled by the group was the SIB CD. The SIB CDs were sold worldwide by a web of different Stanford Financial promoter companies whose sole function was the sale of the SIB CDs. By 2009, SIB had sold over $7.2 billion in CDs.

20.

B. Stanford Financial's Texas Base

Houston, Texas was the administrative nerve center and principal base for Stanford Financial/SIB, and all of the sales and marketing practices of Stanford Financial and SIB were managed under the overall direction, supervision, and control of the Houston offices of Stanford Financial. SIB itself never had a sales force or marketing or promotional arm in Antigua. The head of the global sales force

for SIB was located in the United States, principally in Houston, Texas.

21.

Importantly, SIB's Annual Reports disclosed that SIB paid "referral fees" to Houston-based SGC based as a percentage of SIB's "managed client portfolio", and also disclosed the existence of a "management fee agreement" between SIB and SGC related to marketing and services, including "treasury—related functions, establishing and implementing trading policy, client communications, research, marketing and branding, government and public relations, technology and other related administrative services". SGC's audited financial statements dating back to at least fiscal year 2003 also disclosed that SGC had entered into a joint market arrangement with SIB, and that "Pursuant to joint marketing agreements, the Company [SGC] and the affiliated foreign financial institution [SIB] agreed to jointly market and offer fixed income and trust products to their respective customers. In connection therewith, the Company [SGC] is entitled to referral fees based upon percentages of the referred portfolio as defined in the respective agreements."

22.

All of the Stanford Financial/SIB sales practices, directives, techniques, strategies and reward programs were developed and crafted in Houston and disseminated to the Stanford Financial branch offices around the world, including in Mexico and Venezuela, to be implemented there. All of the sales force training manuals, promotional literature and materials for SIB, including the Spanish-language promotional materials, were created, printed,

packaged and mailed from Stanford's Houston headquarters to the other Stanford Financial sales offices around the world to be utilized by the local sales force in each country.

23.

In addition, mandatory sales training for the Stanford Financial sales force for SIB was conducted principally in Houston (known to the foreign financial advisers as the "Houston experience") by Stanford Financial personnel like Oreste Tonarelli, Monica Manzanares and David Charner. In those mandatory training sessions, sometimes twice a year, the foreign financial advisers were trained to sell the Stanford Financial image. The Stanford Financial "script" for why SIB was a safe and secure place to invest money, as set forth in the training manuals and reinforced "live" in Houston, was drilled and drilled again into their heads. The advisers were thereafter subjected to examinations to reinforce the script and sent back to their home countries to aggressively sell the SIB CDs. Therefore all of the sales, marketing and promotional activities for Stanford Financial and SIB occurred in Texas.

24.

As part of the Stanford Financial sales process, investors like Plaintiffs and the Class were uniformly "sold" the Stanford Financial "image". They were uniformly informed by the Stanford Financial brokers and advisers, whether from Stanford Mexico, Stanford Venezuela or from SGC in Houston, that, *inter alia*, investments in the SIB CDs were safe and sound because SIB was part of the Stanford Financial group based in Houston,

Texas and therefore subject to regulation by the United States government (the SEC and FINRA). Indeed many foreign investors in SIB to this day never understood that they had invested in CDs issued by an Antiguan bank, but always thought their money was invested in Houston, Texas. Investors like Plaintiffs were also uniformly told by Stanford Financial sales agents that the CDs issued by SIB were safer even than U.S. bank—issued CDs because Stanford Financial had unique Lloyds of London insurance policies in place that went above and beyond FDIC insurance; and that investments in the CDs were liquid and the CDs could be redeemed at any time because SIB, through Stanford Financial, only invested the money in safe, secure and liquid assets. All of this was false. These exact, uniform sales representations are contained almost verbatim in the Stanford Financial Training Manuals as well as in the uniform promotional materials for Stanford Financial and SIB that were designed and prepared in and issued from Houston, Texas.

25.

The Stanford Financial/SIB sales and promotional materials created in Texas and distributed uniformly throughout the world intentionally blurred the lines between Antigua-based SIB and the other U.S.-based Stanford Financial entities, including SGC, and intentionally created the false impression that SIB and Stanford Financial (SGC) were one and the same and therefore that SIB enjoyed the same regulation and protections as a U.S.-regulated company, including regulation by the SEC and coverage by SIPC. As the U.S. Receiver has stated, "Stanford's financial advisors used the apparent

legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate sales of SIBL CDs worldwide."[2] Little did the investors like Plaintiffs and the Class know that Allen Stanford, Jim Davis and others were engaged in a long running conspiracy to ensure that Stanford Financial and SIB evaded SEC regulation, and regulation from any other governmental agency, foreign or domestic, at all costs.

C. The Stanford Reality

26.

The reality of the Stanford Financial empire was that, since at least 1988, it was nothing but a massive, worldwide Ponzi scheme that for its very existence and success depended on concealment and the evasion of government regulations and regulators around the world. The Stanford Financial companies operated together as a single business joint enterprise investment company called "Stanford Financial" dedicated to the fraudulent sale of its own, internal product/mutual fund "shares" or participation interests denominated as "CDs", which sales were the lifeblood of the entire enterprise. The master marketing manipulator and salesman, Stanford reached new heights in terms of creating and perpetrating the ultimate "confidence" scam on a global level, convincing thousands of people worldwide to invest their money in his Stanford Financial investment company Ponzi scheme. Stanford became a true international financial "pirate", absolutely intent on operating an "outlaw"

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[2] "Report of the Receiver Dated April 23, 2009" in the SEC Action [docket #336], at 7.

investment company from his Caribbean safe haven completely outside the regulatory confines of the laws of any country, whether the United States, Antigua, Mexico or elsewhere. In 2005 Stanford and Defendant Mauricio Alvarado ("Alvarado"), the former General Counsel of Stanford Financial, specifically hired Defendant Tom Sjoblom, at that time employed by Defendant Chadbourne & Parke LLP ("Chadbourne"), to help Stanford Financial evade and obstruct securities regulation and enforcement in the United States.

27.

Allen Stanford's personal history, by itself, was cause enough to question the veracity of the image he created for the Stanford Financial empire. His first business, a chain of Waco, Texas-based gyms called "Total Fitness", collapsed into bankruptcy in 1982. Allen Stanford declared personal bankruptcy as well in 1984 and was discharged from $13.6 million in obligations.[3] Stanford fled to the Cayman Islands where he became a scuba diving instructor. It was there that he met Dutch ex pat Frans Vingerhoedt, who introduced him to the world of offshore banking.

28.

By 1985 Stanford opened his first bank, Guardian International Bank ("Guardian"), on the tiny (12,000 residents) Caribbean island of Montserrat, which at that time was known mostly for its extremely lax banking regulations. Virtually all of the banks that were opened in Montserrat in the 1980s were "paper" banks dedicated to fraud. In fact David

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[3] *Business Week*, March 5, 2009, "Stanford's Rocky Start."

Marchant, the editor of "Offshore Alert", was quoted as stating that "the only reason you opened a bank in Montserrat was to commit fraud."[4]

29.

Guardian served as the starting point roadmap for the creation of the Stanford Ponzi scheme. Stanford brought in his old college roommate James Davis ("Davis") as Controller for Guardian to help run operations, and also established representative offices for Guardian in Miami and Houston, under the name of Guardian International Investment Services, designed to cater to wealthy Latin American clients.[5] Guardian offered CDs with rates typically 2-3% above the average rates available in the market, all with the confidentiality associated with offshore private banking.

30.

What no one realized, precisely because part and parcel of Stanford's Ponzi scheme was a massive anti-regulatory concealment campaign from at least 1991 all the way through February 2009, was that beginning in 1988 Stanford and Davis had begun fabricating the investment returns for Guardian for the purpose of reporting false revenues and false investment portfolio balances to the banking regulators in Montserrat. Davis has himself now admitted making false entries into the bank's general ledger and otherwise falsifying SIB's financial records for some twenty years. See Plea

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[4] As quoted in Bryan Burroughs, "*Pirate of the Caribbean*", Vanity Fair, at 81 July 2009.

[5] *Business Week*, Feb. 24, 2009, "Did Court Ruling Prolong Stanford Probe?"

Agreement of James Davis, a true and correct copy of which is attached hereto as **Exhibit "1"** and incorporated herein for all purposes, at ¶17(a). For almost twenty years, Stanford and Davis just made up the numbers for SIB as they pleased.

31.

But even with such anti-regulatory concealment efforts, in 1989 the banking system in Montserrat, and Stanford's Guardian Bank in particular, came under investigation by British and U.S. authorities for money laundering. As a result of this heightened regulatory scrutiny, Stanford began casting about for another, more amicable location for his outlaw Ponzi bank. In December 1990 Stanford settled on Antigua because of its reputation for extremely lax regulatory oversight and enforcement and so he incorporated Guardian Bank there. By May 1991 Stanford's banking charter was revoked by Montserrat. So Stanford moved his entire banking operations to Antigua, and simply continued the same basic business plan that had proven so profitable for Stanford in Montserrat. Stanford eventually changed the name of the bank from Guardian to Stanford International Bank ("SIB") in 1994.

32.

Once established in Antigua, Stanford quickly set about ensuring that he would not be subjected to the same regulatory scrutiny he received in Montserrat. At that time, in 1991, Stanford entered into conspiratorial meeting of the minds with Davis, that grew to include others within Stanford Financial, including Laura Pendergest-Holt, SIB President Juan Rodriguez Tolentino, and General Counsel

Mauricio Alvarado, as well as members of the Antiguan Government and other professionals and service providers to Stanford Financial, to do whatever was necessary to evade regulatory scrutiny of SIB's activities and otherwise conceal the true nature of Stanford Financial's activities from regulators worldwide. In furtherance of this concealment conspiracy that was part and parcel of, and central to, the overall Ponzi scheme conspiracy, Stanford moved to establish a symbiotic relationship with the local government in Antigua, and, through corruption, bribes and kickbacks, placed the family of the Prime Minister Lester Bird firmly in his back pocket. In return for political cover and no oversight or regulation of his business, Stanford eventually became a major source of funding for the entire island, loaning hundreds of millions of dollars to the Antiguan government over the years. Stanford even bought the Antiguan newspaper, the Antiguan Sun. By 2004, the island government owed Stanford Financial over $87 million — nearly half of its annual tax revenues. In that same year, SIB had grown to over $3 billion in deposits.

33.

So tight was the relationship between Stanford and the Antiguan government that, when Stanford Financial was accused of money laundering in 1999, the Antiguan government turned to Stanford himself to rewrite the country's banking laws. Stanford and his agents were then named to the commission, the Antiguan Financial Services Regulatory Commission ("FSRC"), created and charged with supervising Antigua's banks. Stanford then used the new commission to wrest control of Antigua's offshore banking industry from the Government. As a result,

the U.S. State Department issued an advisory to U.S. banks to scrutinize all financial transactions coming in or out of Antigua for evidence of money laundering.[6]

34.

Jonathan Winer, then-head of the State Department's Bureau for International Narcotics and Law Enforcement Affairs, said at the time that Antigua is "one of the most attractive financial centers in the Caribbean for money launderers", and that "Antigua has long been one of the worst regulated offshore centers in the world."[7] Winer was recently quoted as saying that when he asked an Antiguan banking official in the late 1990s why anyone would choose that country for banking as opposed to New York, London, Tokyo or Paris: "he scratched his head and after a while he said 'I guess would have to be the secrecy...I'd say it's the secrecy plus the lack of standards or real controls."[8]

35.

Stanford's anti-regulatory conspiracy with members of the Antiguan Government is borne out by the Plea Agreement entered by Stanford CFO Jim Davis, Exhibit "1", as well as by the June 18, 2009 federal grand jury Indictment of *inter alia*, Allen

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[6] *Houston Chronicle*, July 16, 2000, Banker drawing scrutiny / Houstonian's Antigua empire raises questions

[7] Statement to the US Congressional House Committee on Banking Financial Services, Jonathon Winer, US State Department, June 11, 1998.

[8] "Stanford arrives for his Houston hearing", By MARY FLOOD and TOM FOWLER HOUSTON CHRONICLE. June 24, 2009.

Stanford, Laura Pendergest-Holt, and Leroy King ("King"), Stanford's good friend and the former head of Antigua's FSRC, a true and correct copy of which is attached hereto as **Exhibit "2"** and incorporated herein for all purposes (the "Indictment"). The Plea Agreement and Indictment allege that for years King, while acting as the CEO of the Antiguan FSRC, accepted bribes from Stanford and/or his associates in return for ensuring that the FSRC "looked the other way" and did not properly perform its regulatory functions or supervise SIB. King even entered into a bizarre Voodoo-like "blood brother" ritual with Allen Stanford in which he agreed to forever be bound to Allen Stanford. As part of the blood brother relationship and bribery, King became Stanford's regulatory spy and "inside man" in terms of relaying information to Stanford concerning the SEC's investigations of Stanford Financial and SIB from 2005 all the way until 2009. All of this was just part and parcel of Stanford's broader conspiracy to keep his Ponzi scheme alive by evading and obstructing regulation of SIB's activities at every turn and in every county.

36.

Stanford Financial began to grow exponentially beginning in 2000. In 2001, Stanford filed for an SEC Regulation D exemption to allow Stanford Financial to sell SIB CDs to U.S. residents through SGC brokers in the United States. Stanford thereafter began the practice of "head hunting" for U.S. brokers and financial advisers, paying enormous signing bonuses to financial advisers to leave their jobs at other firms and transfer their book of clients over to Stanford Financial. Once at Stanford Financial, these same financial advisers

were then pressured into promoting and selling SIB CDs to their clients, and were rewarded with outsized bonuses. If a financial adviser refused to sell the CDs, or otherwise questioned what was really going on at Stanford Financial, they were fired, sued to recover the bonuses and blackballed in the industry. Fueled by this influx of veteran brokers and investment advisers, Stanford Financial grew from 6 branch offices in the United States to more than 25 between 2004 and 2007, during the time that Defendants represented Stanford Financial.

37.

From 2000 to 2008 Stanford Financial grew into a high-powered sales and marketing juggernaut. The different Stanford Financial sales offices competed with each other for CD sales, and developed team names like "Money Machine", "Aztec Eagles" (the Mexico team) and "Superstars". In order to market and sell the SIB CDs, Stanford established a commission structure that provided huge incentives for the Stanford Financial brokers and financial advisers, including those in Mexico, to "push" the SIB CDs on investors like Plaintiffs. SIB paid disproportionately large commissions to its Stanford Financial brokers and advisers for the sale of CDs; they received a 1 % commission upon the sale of the CDs, and were eligible to receive as much as a 1 % trailing commission throughout the term of the CD. Stanford Financial used this generous commission structure to recruit established financial advisers to the firm, and to reward those advisers for aggressively selling the CDs to investors.

38.

Beginning in 2003 Stanford's strategic plan to lure top financial advisers away from their employers to work for Stanford Financial began to back-fire as several U.S. advisers renounced their new position with Stanford and lodged complaints with FINRA f/k/a the NASD, including charges that Stanford Financial was running a massive Ponzi scheme. Some of the advisers were fired or otherwise resigned for refusing to promote and sell the SIB CDs to their clients or for questioning what was going on at Stanford Financial. Between 2003 and 2008 over a dozen Stanford Financial advisers and employees, including Leyla Basagoitia and Charles Hazlett in 2003; Lawrence J. DeMaria in 2006; Charles Satterfield in 2007; and Mark Tidwell and Charles Rawl in 2008, were discharged or resigned amid allegations of fraudulent practices at Stanford Financial. All of these employees, none of whom had 20 years legal experience working in enforcement for the SEC, quickly figured out that Stanford Financial was nothing but a Ponzi scheme; De Maria came to that conclusion in just a few months of working as a copy writer for Stanford Financial.

39.

The ultimate reality of Stanford Financial is that it was, at all times, illegally operating an investment company hedge fund or mutual fund (called "Stanford Financial") from, by and through Houston, Texas and issuing "shares" or participation interests (called "CDs") in the investment company via an offshore bank in Antigua. At the end of the day, investors like Plaintiffs and the Class purchased

participation interests in Stanford Financial and SIB's investment portfolio, just like any mutual or hedge fund. SIB, acting through the Stanford Financial international network of brokers and advisers, lured money from investors like Plaintiffs; gave them an "IOU" piece of paper called a "Certificate of Deposit" in return; and then pooled all of the investors' money together and scattered it throughout the Stanford Financial enterprise to make investments in various illiquid and high risk assets worldwide ---- the very definition of an investment company. As such, in reality Stanford Financial was operating as a type of unregistered mutual or hedge fund and selling "shares" or participation interests to Plaintiffs and others from, by and through Houston, Texas.

40.

Any former SEC lawyer, especially one like Sjoblom with 20 years experience in enforcement, could see that Stanford Financial was operating an unlicensed, unregulated mutual or hedge fund directly in and from the United States. Indeed the SEC, in its July 21, 2005 investigatory referral letter to FINRA, concluded that Stanford was running an investment company and selling "shares" or participation interests in said investment company to unwitting investors. More recently, in its Complaint against Stanford and his entities, the SEC has alleged that SIB and SGC violated §7(d) of the Investment Company Act. Neither Stanford Financial nor SIB were registered or authorized to operate as an investment company in the United States, a fact that was never disclosed to Plaintiffs or the Class, who were consistently and uniformly told verbally and via the Stanford Financial promotional

materials that SIB was part and parcel of the Stanford Financial group based in Houston, Texas, authorized and regulated by the SEC and FINRA and backed by SIPC and Lloyd's of London insurance coverage. Nor were Plaintiffs ever told that Stanford Financial was engaged in a massive Ponzi scheme conspiracy that included, as a central component, evading and obstructing regulation and enforcement in the U.S. and Antigua.

41.

Besides the fraud committed on Plaintiffs and the Class based on the marketing of Stanford Financial and SIB as being one and the same and completely regulated, Stanford Financial also touted the high liquidity of SIB's investment portfolio. For example, in its marketing materials, Stanford Financial emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Likewise, Stanford Financial trained its advisers to stress liquidity in their marketing pitches to prospective investors, telling the brokers and advisers that "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients..." To ensure that depositors could redeem their CDs, Stanford, through its brokers and advisers, assured the investor clients that SIB's investments were liquid and diversified, and therefore that the CDs themselves were highly liquid

and could be redeemed with just a few days notice. But in fact, nearly 80% of SIB's investments were concentrated in high-risk, illiquid categories: (1) unsecured loans to Allen Stanford in the amount of $1.6 billion; (2) private equity and (3) real estate. None of that was ever disclosed to Plaintiffs or the Class.

42.

Contrary to Stanford Financial's representations (both verbal and via the promotional materials) to Plaintiffs and the Class regarding the liquidity of its portfolio, SIB did not invest in a "well-diversified portfolio of highly marketable securities." Instead, significant portions of the bank's portfolio were misappropriated by SIB's sole shareholder, Allen Stanford, and used by him to acquire private equity and real estate. In fact, at year-end 2008, the largest segments of the bank's portfolio were: (i) undocumented "loans" to Mr. Stanford; (ii) private equity; and (iii) over-valued real estate. By February 2009, Mr. Stanford had misappropriated at least $1.6 billion of investor money through bogus personal loans and "invested" an undetermined amount of investor funds in speculative, unprofitable private businesses controlled solely by himself, including massive investments in real estate and other private business ventures in Antigua. The rest of the money from investors was just blown by Stanford on creating and perpetuating the image charade with lavish offices, outsized bonuses and commissions paid to lure and retain top performing sales personnel, extravagant special events for clients and employees, and the other accoutrements necessary to shore up the Stanford Financial image

of wealth, power and prestige. None of this was disclosed to Plaintiffs and the Class.

43.

As alleged in the Davis Plea Agreement (Exhibit 1) and in the Indictment of Allen Stanford, Leroy King and the others (Exhibit 2), Stanford and his CFO Jim Davis "fabricated the performance of the bank's investment portfolio and lied to investors about the nature and performance of the portfolio. Gilberto Lopez and Mark Kuhrt, accountants for Stanford-affiliated companies, fabricated the financial statements. Using a pre-determined return on investment number, typically provided by Stanford or Davis, Lopez and Kuhrt reverse-engineered the bank's financial statements to report investment income that the bank did not actually earn. Information in SIB's financial statements and annual reports to investors about the bank's investment portfolio bore no relationship to the actual performance of the bank investments. SIB's financial statements and annual reports to investors were prepared, drafted and approved by Stanford, Davis, Lopez and Kuhrt. Stanford and Davis signed these falsified financial statements."[9]

44.

At the end of the day, the entire Stanford Financial empire was dominated completely by one man—Allen Stanford. Although SIB purported to have an independent board of directors, an investment committee, a chief investment officer and teams of global portfolio advisers and analysts, in truth and in fact the vast majority of the bank's

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[9] SEC Second Amended Complaint, at ¶4.

assets were managed exclusively by Mr. Stanford and his right hand man and former college roommate Jim Davis.

45.

In running the Stanford Financial empire from the United States, Stanford and Davis surrounded themselves with a close-knit circle of family, friends and confidants. The SIB Board of Directors included Stanford's 81 year old father and his 85 year old friend, O.Y. Goswick, a former rancher who was listed in Stanford Financial's annual reports as being somehow in charge of SIB's "investments", but who in reality, and according to his own son, did not have sufficient financial knowledge to understand SIB's operations and had suffered a stroke in 2000 that left his ability to communicate "nonexistent".[10]

46.

Moreover nepotism predominated within Stanford Financial, where the upper level management team was comprised of a tightly linked web of friends and family of Stanford and Davis. Just as Stanford brought in his old friend Davis, Davis in turn brought in his protégé, the young Laura Pendergest-Holt, whom Davis had met at the Mississippi Baptist church where Davis was a Sunday school teacher. In turn, Pendergest-Holt's cousin Heather Sheppard was an "equity specialist" at Stanford Financial, while her sister's husband, Ken Widen, was Stanford Financial's managing director for investments and research. Jim Davis' brother in law, Danny Bogar, served as SGC's President and ran Stanford

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[10] Jamie Stengle, "*Dad, 81, to Stanford: 'Do the Right Thing'*", Associated Press, February 20, 2009.

Financial's operations for the entire United States. Davis' son Zack also worked for Stanford Financial as an "equity specialist".

47.

Pendergest-Holt's resume, in particular, was an instant red flag. As the Chief Investment Officer allegedly in charge of investments for SIB and overseeing an $8 billion portfolio, she had no real business or finance education or training. Lawrence Lieberman, senior managing director at Orion Group, an executive recruiter firm for the money management industry, was quoted as saying that Pendergest-Holt was hired for the position as Chief Investment Officer probably because Stanford and Davis "needed someone they could trust and not someone who could pick stocks".[11] Davis recruited Pendergest-Holt to work at Stanford Financial in 1997 when she was a recent 22 year old college graduate from Mississippi State, where she earned a degree in Math. She quickly worked her way up the ranks from research analyst to managing director of research and investments until she became Chief Investment Officer when she was 30 years old, all with no degree or background in finance whatsoever. According to Lieberman, Stanford "may not have wanted a legitimate CIO because that person might have asked a lot more questions and not played ball".[12]

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[11] Ana Driver and Svea Herbst-Bayliss, "*Stanford's CIO's Fast Path to Top a Red Flag*", Reuters, March 8, 2009.

[12] *Id.*

48.

The same is true of the lead accountants for Stanford Financial, both of whom were recently indicted as well. As alleged in the Indictment and the SEC's Second Amended Complaint, Gilberto Lopez was the Chief Accounting Officer for Stanford Financial, and yet he was not a licensed CPA. Mark Kuhrt, also indicted, served as the Global Controller for Stanford Financial, and yet was not a licensed CPA either. These two non-CPAs were in charge of accounting for a global financial services company with (allegedly) $50 billion "under advisement".

49.

By year-end 2008, Stanford Financial had sold approximately $7.2 billion worth of SIB CDs by touting: (i) the bank's safety and security; (ii) consistent, double-digit returns on the bank's investment portfolio; and (iii) high return rates on the CD that greatly exceeded those offered by commercial banks in the United States. SIB sold between $4 billion and $5 billion in CDs between 2005 and February 2009. It was at the end of 2008, in the midst of the worldwide financial meltdown, that Stanford Financial began to stumble.

50.

As alleged in the Indictment (Exhibit 2) and admitted to by Davis in the Plea Agreement (Exhibit 1), in 2008 Stanford and Davis, aided by Defendant Alvarado and other, concocted a bogus $541 million shareholder equity infusion, in order to cover up a gaping hole in SIB's balance sheet that would cause it to fall below minimum capital requirements, by manufacturing a series of fraudulent "roundtrip" real estate deals whereby

Stanford took a piece of property he purchased for $63 million and transferred it to some entities who "booked" it at $3.2 billion and then transferred shares in those entities back to SIB. This fraudulent transaction was just a continuation of the persistent falsification of SIB's financial condition and performance over the preceding 20 years. But the entire operation was finally coming unhinged.

51.

In December 2008 Stanford Financial's clearing firm, Pershing, informed Stanford Financial that it would no longer process wire transfers from SGC to SIB for the purchase of CDs. Earlier in 2008, Pershing had requested that Stanford Financial provide it with an independent report of SIB's financial condition, which Stanford Financial refused to do. Furthermore, and due to some $500 million in CD redemptions spurred by the global economic meltdown, Stanford Financial began suffering liquidity problems that prevented SIB from complying with client requests for transfers of funds. This had a huge impact on the ability of the Stanford's financial advisers to keep clients pacified.

52.

In January 2009, in the wake of the Madoff scandal, Venezuelan financial analyst Alex Almay performed a rudimentary review of SIB's returns over the years as a favor for a friend, and then published his findings in a Venezuelan magazine under the title "Duck Tales", which was then re-published in various blog postings. Dalmady concluded that Stanford Financial was nothing but

another Ponzi scheme — a Ponzi "duck". The cat was out of the bag.[13]

53.

The U.S. federal authorities then issued subpoenas to Stanford Financial. In advance of a deposition before the SEC, Stanford Financial officials met with Defendants in Miami on February 3-8, 2009. During those meetings, on February 6, 2009, Allen Stanford's old friend Frans Vingerhoedt sent Allen Stanford an e-mail, copying the head of Stanford Mexico David Nanes, that reads in part, that "*things are starting to unravel quickly on our side in the Caribbean and Latin America...[w]e need to come up with a strategy to give preference to certain wires to people of influence in certain countries, if not we will see a run on the bank next week ...[w]e all know what that means. There are real bullets out there with my name on, David's name and many others and they are very real ...[w]e are all in this together.*"

54.

On February 17, 2009 the United States Securities and Exchange Commission ("SEC") filed a Complaint against SGC and SIB, as well as against Mr. Stanford and Mr. Davis, in the U.S. District Court for the Northern District of Texas, alleging a "massive Ponzi scheme of staggering proportions". The SEC obtained an injunction and froze the assets of the Stanford Financial group and appointed a receiver, Ralph Janvey to liquidate the companies.

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[13] *Id.*

55.

The SEC, through its Second Amended Complaint, has now alleged a fraud of shocking magnitude. The SEC alleges that Stanford, together with his co-conspirators, engineered and carried out a decades-long scheme to convert Plaintiffs' and the Class' investments in Stanford Financial and SIB into his own personal "piggy bank" to fund his extravagant lifestyle, including paying for his private harem of women and their children; a fleet of jets; yachts; and mansions in several different countries. On June 18, 2009 Stanford, Pendergest-Holt, Lopez, Kuhrt and King were indicted on 21 counts including wire and mail fraud, obstruction of an SEC investigation and money laundering. Exhibit "2". On August 27, 2009 CFO Jim Davis admitted to running a Ponzi scheme for 20 years and plead guilty to, *inter alia*, securities and wire fraud. Exhibit "1".

56.

D. Defendants' Participation in Stanford's Conspiracy

Central to Stanford's ability to perpetuate and keep alive a massive Ponzi scheme was the ability to shield SIB from regulators and conceal the true nature of Stanford Financial's activities and investment portfolio by blocking regulatory scrutiny at every level and in every country. After having learned the lessons of Montserrat, Stanford determined that he did not want his fraudulent banking operations to be upended by a regulatory investigation again. Once ensconced in his Antiguan safe haven, from at least 1991 on Stanford, in conspiracy with Davis and others, embarked on a

campaign to protect his Ponzi scheme from outside regulatory interference, convinced that his schemes absolutely depended on his ability to conceal SIB's true nature and activities and to keep the regulators at bay around the world. The success of Stanford's Ponzi scheme required concealment, and concealment inherently became part of and in furtherance of the main objectives of the Ponzi scheme conspiracy. In order to accomplish that concealment, and as described herein, Stanford resorted to lies, trickery, bribery, "blood brother" voodoo rituals, obstruction of regulatory investigations and other machinations to throw off or otherwise co-opt regulators and insulate himself and his operations from regulatory scrutiny in several countries.

57.

Of course, Stanford could not keep the regulators at bay by himself, and so from 1991 onwards he entered into a meeting of the minds with Davis, Leroy King and others (including, later, Defendants) whose central objective was the continued evasion and concealment of Stanford Financial's activities from regulatory authorities. Frustration of investigatory efforts by the SEC, in particular, and other agencies in a highly regulated environment such as securities was central to the overall Stanford Ponzi scheme conspiracy, and Stanford and his co-conspirators' efforts to hinder and obstruct regulators was essential to, and therefore in furtherance of, the survival of the overall Stanford Ponzi scheme.

58.

The conspiracy to conceal, hinder and obstruct gained a sense of urgency in the summer of 2005, when the SEC and FINRA initiated investigations of Stanford Financial, SGC and SIB. On July 21, 2005 the SEC sent an investigatory referral letter to FINRA in which the SEC outlined its concerns that, *inter alia*, (1) Stanford was committing securities fraud; (2) the CDs constituted "securities" under U.S. law; (3) Stanford appeared to be illegally operating an unregistered investment company (a mutual or hedge fund) in the United States; (4) as of 2004, 63% of SGC's revenues were derived from the sales of CDs; and that (5) Stanford had sold over $1.5 billion in CDs, making it a potentially large problem.

59.

In response to the SEC investigation initiated in the summer of 2005, and as alleged in the Indictment (Exhibit 2), Allen Stanford, Davis and their co-conspirators, as part of the ongoing conspiracy to conceal, hinder and obstruct regulators, blocked and obstructed the SEC investigation at all turns from the summer of 2005 through February 2009. The Indictment alleges that from June 2005 through March 3, 2009, Stanford, Pendergest-Holt, Davis and others engaged in a conspiracy in the Southern District of Texas to "corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, in whole or in part, a pending proceeding before...the SEC, in violation of 18 U.S.C. §1505". See Indictment, Ex. "2", at pps. 41-45. The Indictment alleges that the object of the conspiracy was to obstruct the SEC's investigation of Stanford Financial and SIB so as to

"perpetuate and prevent detection of an ongoing fraud" so that Stanford Financial and SIB could "continue receiving economic benefits from the fraud." *Id.*, at 42-43.

60.

In order to aid their conspiracy to obstruct the SEC investigation, on or before August 2005 Stanford retained Chadbourne & Parke, LLP and partner Thomas Sjoblom, Defendants herein, as outside counsel to represent the interests of Stanford Financial and SIB in the SEC investigation of Stanford Financial and SIB. Importantly, Stanford hired Sjoblom because Sjoblom had been an SEC enforcement trial lawyer for some 20 years, and as such had experience in securities fraud schemes and SEC investigations and enforcement actions. Upon hiring Sjoblom, there was a meeting of the minds as between Sjoblom (acting on behalf of Chadbourne), Stanford, Davis, Alvarado and Leroy King as to the objective of the conspiracy ---- being the obstruction of SEC investigations so as to allow Stanford Financial and SIB to evade SEC regulation — and Sjoblom thereafter worked closely with Stanford, Davis, King, Defendant Alvarado and others at Stanford Financial to advance Stanford Financial and SIB's interests in the SEC investigation, being to continue to evade and avoid SEC regulation of Stanford Financial and SIB's activities and obstruct the ongoing SEC investigation from 2005 through February 2009.

61.

As part of his retention, in August 2005, Sjoblom, acting as an employee of Chadbourne, traveled to the SIB facility in Antigua where he met with Stanford,

Davis, Antigua's head of the FSRC Leroy King and others to familiarize himself with the operations and finances of SIB. Shortly prior to that meeting, in June 2005, King had received a confidential letter from the SEC in his capacity as head of the FSRC wherein the SEC had requested the FSRC's assistance in the investigation of Stanford Financial and SIB. King had provided the confidential SEC letter to Stanford and Stanford, together with others, had assisted King prepare a false and misleading response to the SEC.

62.

It was in this atmosphere that Sjoblom traveled to Antigua to meet with Stanford and King in August 2005. At that time, Sjoblom reviewed SIB's disclosures to investors in its CD program. Thus by August 2005 Sjoblom had an understanding of Stanford Financial's business operations, including that it was operating a securities marketing and sales operation from Houston, Texas issuing CDs from an offshore bank, and Sjoblom also understood that Stanford Financial was under investigation by the SEC and that the head of the SEC's counterpart in Antigua, King, was meeting and working together with Stanford, and that King was passing insider, confidential information about the SEC investigation to Stanford. Thus by that time in August 2005, Sjoblom, a former SEC enforcement lawyer with 20 years experience, knew that Stanford was at the very least running an unregulated investment company mutual or hedge fund from his base in Houston, Texas in the guise of issuing CDs from a wholly owned bank in one of the most corrupt offshore tax and fraud havens in the Caribbean.

Instead of passing on this assignment, Sjoblom eagerly agreed to help.

63.

In October 2005, Sjoblom sent a letter to the SEC's Fort Worth office, with copy to the Dallas office of FINRA, in which he argued that the SEC did not have jurisdiction over Stanford Financial's CD sales program because the CDs did not constitute securities under U.S. law. Sjoblom's letter cited case law from the U.S. Supreme Court indicating that CDs issued by banks in the United States and insured by the FDIC were not "securities" for purposes of the federal securities laws, and also highlighted case law holding that certain foreign bank-issued CDs did not constitute securities due to the availability of satisfactory bank regulation in the foreign country. In the letter, Sjoblom argued that Antiguan law provided CD holders with priority claim status. Sjoblom also argued to the SEC that SIB was subject to comprehensive regulation in Antigua, and that U.S. courts were bound to show respect to this regulatory system.

64.

All of Sjoblom's representations to the SEC and FINRA about Antiguan law were false. Antiguan law does not in fact provide true priority claim status for CD holders, and, as has become clear now, the protections offered by Antiguan law for the investors in the SIB CDs are, in fact, non-existent. Specifically, Antiguan corporate law gives the payment of wind-up costs, the payment of officers and employees for up to three months prior to the seizure of the bank; all taxes due; and the "fees and assessments owing to the appropriate officer"

priority over any portion of time deposit funds. In addition, Antiguan law provides that time deposit holders are only given preference over other creditors for up to $20,000 in deposit funds.

65.

Furthermore, by the time he sent this letter in October 2005, Sjoblom had already been to Antigua and had met with Stanford's "blood brother", Leroy King, the head Antiguan "regulator" for SIB, and therefore was aware of the cozy relationship between King and Stanford, to such an extent that King was passing confidential, government-to-government regulatory communications concerning Stanford to Stanford. Sjoblom also knew that the CD program was being marketed to potential investors purely for investment — and no other -- purposes; that SIB was not a commercial bank and, instead of making loans, SIB took the money it received from the sale of CDs and itself invested in an allegedly diversified portfolio that included stocks, bonds, notes, private equity, precious metals and other commodities , much like a mutual fund; and that SIB itself, including its portfolio, was being managed and run from the United States. He also knew that SIB had applied for and been granted a securities Regulation "D" exemption for sales to qualified U.S. investors. With his 20 years of experience working in enforcement for the SEC, Sjoblom knew that Stanford was running an unregistered investment company disguised as an offshore bank; that the SIB CDs more than likely constituted securities under U.S. law; and that the CDs were being marketed and sold illegally from within the United States.

66.

As part of the ongoing conspiracy to obstruct the efforts of regulator worldwide, on July 30, 2006, Leroy King transmitted to Defendant Alvarado, in his capacity as Stanford Financial's General Counsel in Houston, Texas, a letter dated July 11, 2006 from the Director of the Bank Supervision Department at the Eastern Caribbean Central Bank ("ECCB") to the FSRC in Antigua concerning, *inter alia*, the affiliate relationship of SIB to the Bank of Antigua. Similarly, on August 1, 2006, King faxed to Defendant Alvarado in Houston, Texas, a proposed response to the ECCB letter which sought the input of Defendant Alvarado in crafting a response by the FSRC calculated to mislead the ECCB as to the financial bona fides of SIB to prevent legitimate scrutiny of SIB by the Eastern Caribbean bank regulator. Recognizing that he had willingly ceded his regulatory authority and responsibilities to Allen Stanford's lawyers, King jokingly concluded the August 1, 2006 facsimile transmission with the following handwritten words: "Please do not bill me (laugh), Thanks a million, Lee"

67.

On September 25, 2006, King provided to Stanford and Defendant Alvarado another confidential letter he had received from the SEC wherein the SEC again sought records and information regarding SIB's CD investment portfolio. Upon information and belief, Defendant Alvarado, in turn, consulted with Sjoblom regarding the contents of this new confidential SEC letter. Stanford, Davis, and Defendant Alvarado then proposed various responses designed to mislead the SEC and

requested that King insert same into the FSRC's official response to the SEC's confidential letter, which King did. Discovery will reveal what role Sjoblom had in the contents of that response letter.

68.

In late September of 2006, Sjoblom contacted the SEC and represented that he had "heard through the grapevine" that the FSRC had not been provided with an appropriate request from the SEC for documents; that the SEC should "go to Antigua" to review the SIB examination reports issued by the FSRC; that the SEC had "no basis" to request documents regarding SIB's investment portfolio from SIB; that he (Sjoblom) had spent 15 years investigating fraud for the SEC and was "well-equipped" to recognize the "hallmarks of fraud"; that he (Sjoblom) found SIB to be credible in all their business dealings; and that, based upon his review of the situation and personal visit to SIB, Sjoblom found SIB to be an "incredible institution." Of course the "grape vine" that Sjoblom referred to was the insider, confidential information regarding the SEC investigation provided by King to Stanford and Defendant Alvarado.

69.

In response to the SEC investigation in 2005, Stanford Financial developed policies for use in the U.S. offices of SGC designed to evade, hinder and obstruct said SEC investigation. Upon information and belief, Defendants were involved in the development of these policies in conjunction with others at the SGC offices in Houston, Texas. The policies implemented in 2005 and 2006 included the

destruction of Stanford Financial records that might be uncovered in the SEC investigation.

70.

As alleged by former Stanford Financial brokers D. Mark Tidwell and Charles W. Rawl in their Harris County lawsuit against SGC, the new policies adopted by Stanford Financial included ordering the removal or destruction of information contained in client or company files in response to an ongoing SEC investigation into SGC's CD sales practices, and purging electronic data from its computers in response to the SEC investigation. In particular, Rawl and Tidwell became concerned when, in the summer of 2006 (right around the same time Sjoblom was calling the SEC to tell the SEC to leave Stanford Financial alone), all of the assistants to the Stanford Financial Advisers were told to remove any information that wasn't on Stanford Financial letterhead, including notes and inter-office e-mail, from their client files, just ahead of an SEC inspection. Then in March 2007, Rawl and Tidwell were called into a meeting with management, in which they were told to stop enumerating any concerns they had about SIB in inter-company e-mails because the e-mails could fall into the hands of the SEC. Rawl and Tidwell announced to their supervisor, Jay Comeaux, that they wanted to resign, but instead they were terminated by Stanford Financial and then sued, in what had become a common practice at Stanford Financial for anyone who questioned what was really going on.

71.

During this same 2005-2007 time period, when Defendants were representing Stanford Financial to counter the SEC investigation, another Stanford Financial employee, Charles Satterfield, was terminated and thereafter alleged in a 2007 FINRA arbitration suit that Stanford Financial executives held the SEC in "utter contempt" and refused to file required documents, hid information from the SEC and destroyed files. Satterfield alleged that he received more training from Stanford Financial in what *not* to discuss in archived company e-mails (thus circumventing the intent of records retention requirements) than he was given in how to comply with anti-money laundering statutes. Indeed, Satterfied was eventually fired, in part, because he continued to raise issues of Stanford Financial's non-compliance in e-mail exchanges with his superiors.

72.

By June 2008, various agencies of the United States government were investigating Stanford Financial, including the SEC, FBI, IRS and U.S. Postal Inspection Service. See Affidavit of FBI Special Agent Vanessa G. Walther, attached hereto as **Exhibit "3"** and incorporated herein for all purposes. In late 2008, Sjoblom was informed that SIB's CD investment portfolio included a previously undisclosed third tier of investments (Tier III) that was not "managed" by Pendergest-Holt. Subsequently, in early January 2009, Sjoblom was informed that this third tier included real estate investments and private equity. Sjoblom, through his prior review of SIB's disclosures knew and understood that this third tier of investments,

including the real estate investments, had not been disclosed to investors. In early January of 2009 Sjoblom further learned that this undisclosed third tier of investments constituted approximately 80% of SIB's investment portfolio, or approximately $6 billion.

73.

On January 14, 2009, the SEC served, through Sjoblom, investigatory subpoenas to Stanford, Davis and Pendergest-Holt seeking testimony and documents related to SIB's investment portfolio. Sjoblom understood that the SEC inquiry would require Stanford, Davis and Pendergest-Holt to make a complete and transparent presentation to the SEC, under oath, regarding all of the assets related to SIB's CD program, including Tier III.

74.

On January 21, 2009, Sjoblom met with Stanford, Davis, Pendergest-Holt and others at the SIB airplane hangar in Miami, Florida, to discuss the SEC investigation and to determine who should testify before the SEC. At that meeting, and despite their knowledge that only Stanford and Davis were in a position to discuss the assets in the Tier III portfolio, Stanford, Davis, Pendergest-Holt, and Sjoblom all agreed that Sjoblom would lie to the SEC and seek to convince the SEC that Stanford and Davis didn't know anything about SIB's assets and that Pendergest-Holt and another SIB executive, SIB President Rodriguez Tolentino, were the best individuals to present testimony and evidence to the SEC regarding SIB's entire investment portfolio. The participants also agreed to participate in a series of meetings in Miami, Florida during the week

of February 2, 2009, to bring Pendergest-Holt and Rodriguez Tolentino "up to speed on Tier 3" before their testimony to the SEC.

75.

On January 22, 2009, Sjoblom met with several SEC attorneys at a restaurant in Houston, Texas to discuss issues related to the SEC investigation of Stanford Financial and SIB. The SEC attorneys reiterated that their investigation was seeking to determine where and how the entire portfolio of SIB assets were invested and managed, and that in order to do so they needed to depose Stanford Financial executives with the most knowledge of the "entire investment portfolio". Sjoblom falsely represented to the SEC lawyers that Allen Stanford and Davis did not "micro-manage" the portfolio and that Pendergest-Holt and Rodriguez Tolentino were the "better people to explain the details" about SIB's entire portfolio. Sjoblom also represented to the SEC attorneys that SIBL was "not a criminal enterprise" and that "all assets are there."

76.

The next day, January 23, 2009, Sjoblom met again with an SEC attorney at SFG's offices in Houston, Texas. Sjoblom requested that the SEC attorney defer the SEC subpoenas to Allen Stanford and Davis, and once again lied to the SEC and represented that Pendergest-Holt and Rodriguez Tolentino would be better witnesses than Stanford and Davis, whom Sjoblom claimed were executive level officers of the company not involved in the "nuts and bolts" of the operations and who would not be able to tell the SEC attorneys about details of SIB's assets. As a result of Sjoblom's misleading

statements, the SEC attorneys agreed to postpone the testimony of Stanford and Davis and to instead take the testimony of Pendergest-Holt and Rodriguez Tolentino on February 9-10, 2009, respectively.

77.

On January 24, 2009, Sjoblom sent an email to Defendant Alvarado, which Defendant Alvarado then forwarded on January 25, 2009 to Davis, Pendergest-Holt and Allen Stanford, in which Sjoblom stated that he had persuaded the SEC that Pendergest-Holt and SIB President Rodriguez-Tolentino, not Stanford and Davis, would be better witnesses to testify about SIB's entire portfolio of assets. Sjoblom further stated that "[w]e can fully anticipate that the SEC will want [Rodriguez Tolentino] to testify under oath that the bank is 'real,' the CDs are 'real,' that the money is actually invested as described in our documents, and that client funds in the CDs are safe and secure. The [SEC] staff will want to be protected against obstruction and perjury ... [Rodriguez Tolentino] will have to be fully and carefully prepared so that he can provide details as best as humanly possible". Sjoblom further stated in the e-mail that Pendergest-Holt would have to explain to the SEC her management and supervision of the bank portfolio and that, since she knew little about Tier 3, she would "have to get up to speed on Tier 3 before the SEC investigation". Sjoblom finished the e-mail by stating that he wanted to make sure that Rodriguez Tolentino and Pendergest-Holt had enough time to "prepare and practice" the week before the SEC meeting.

78.

On or about January 27, 2009, Sjoblom sent an email to Pendergest-Holt and Rodriguez Tolentino, with a copy to Davis, regarding the need to address all three tiers of the SIBL asset portfolio, stating that they (Pendergest-Holt and Rodriguez Tolentino) needed to "rise to the occasion" and that "our livelihood depends on it." Sjoblom at that point was clearly intent on doing whatever was necessary to keep his client Stanford Financial (and SIB) in business.

79.

In the last week of January 2009, right in the midst of the red hot SEC investigation, Davis traveled to Antigua to meet with FSRC CEO King. King appeared very stressed, and related to Davis that he had once again been contacted by the SEC. King asked Davis if "we were going to make it?", to which Davis responded that he thought they were going to be ok.

80.

On February 3, 4, 5 and 6, 2009, Sjoblom met with Davis, Pendergest-Holt, Rodriguez Tolentino, Defendant Alvarado, and, ultimately, Stanford himself (on February 5) and others at the Stanford Financial offices in Miami in order to "prep" the witnesses for their testimony to the SEC. During those meetings, Pendergest-Holt disclosed that the value of the assets she actually managed in Tier II totaled approximately $350 million, down from $850 million in June of 2008. At the meetings, Davis further revealed that the purported value of Tier III of SIB's investment portfolio was made up of: (1) real estate valued at in excess of $3 billion which

allegedly had been acquired earlier that year by SIBL for less than $90 million; (2) $1.6 billion in "loans" to Allen Stanford; and (3) various other private equity investments. Several of the Miami meeting participants acknowledged that if this disclosure was accurate, then the bank was insolvent. At that point, Rodriguez Tolentino stated that he would not testify before the SEC. SGC President Danny Bogar broke down crying, and declared that he would have to go the SEC and disclose the information. Instead, Sjoblom suggested that they pray together.

81.

The next day, February 5, 2009, Stanford himself made an appearance at the meetings and falsely informed the participants that despite what they had just been told, SIB had "at least $850 million more in assets than liabilities." Later in the day of February 5, 2009, Stanford, Davis and Sjoblom attended a separate meeting where Stanford acknowledged that SIB's assets and financial health had been misrepresented to investors, and were overstated in SIB's financials. After that meeting, Sjoblom entered the office of another Stanford Financial executive, Lena Stinson, and declared that the "party is over".

82.

On February 9, 2009 Sjoblom sent Defendant Alvarado an email admitting he'd helped Pendergest-Holt prepare the presentation she was going to give to the SEC. Sjoblom further stated that she would be asked "lots of questions" about all players, SIB, marketing materials, and a little about Tier III to the extent she knew. Defendant Alvarado

responded with frustration about the presentation, saying it "needs to be complete, accurate and correct. Thus you need to postpone her appearance before the SEC." Sjoblom opted instead to go forward with the presentation.

83.

During her testimony to the SEC on February 10, 2009 in Fort Worth, Texas, in which she, as an executive of Stanford Financial, was represented by Sjoblom, Pendergest-Holt committed perjury over and over while Sjoblom sat there, clearly aware of the outright lies being spun by his client to the SEC. In fact Sjoblom actively suborned Pendergest-Holt's perjury. In answering a direct question about who she had met with previously to help prepare for her testimony, Pendergest-Holt responded that she had only met with Sjoblom and no one else. When the SEC lawyers pressed her a little more about whether anyone else was present during her meetings with Sjoblom, Sjoblom interrupted Pendergest-Holt as she started to answer the question and intentionally steered her to answer "no" by improperly recasting the question to narrow it to "when we were preparing *last night*, was there a third person present?", to which she answered "no". Testimony of Laura Pendergest-Holt, February 10, 2009, at 13:7-14:15. In addition to failing to disclose the Miami meetings the prior week and the participants at the meetings, Pendergest-Holt falsely stated in her SEC testimony that she was unaware of the assets and allocations of assets in Tier III of SIB's portfolio, including specifically the existence of the $1.6 billion loan to Allen Stanford that was included in Tier III.

84.

On February 12, 2009 Defendants Sjoblom and Proskauer sent a letter to the SEC informing that they were withdrawing from further representation of Stanford Financial and SIB in all enforcement and other regulatory matters before the SEC. Two days later, on February 14, 2009 Sjoblom sent an e-mail to SEC attorney Kevin Edmundson in which he disaffirmed "all prior oral and written representations made" by Sjoblom to the SEC regarding Stanford Financial and its affiliates from the beginning of his retention in 2005 (while at Chadbourne) through February 2009. See Sjoblom 2/12/09 letter and 2/14/09 e-mail, true and correct copies of which are attached hereto as **Exhibit "4"**.

85.

On February 25, 2009, Pendergest-Holt was criminally charged with lying to the SEC during the testimony she gave on February 10, 2009. In late March, 2009, Pendergest-Holt filed a lawsuit against Defendants Sjoblom and Proskauer for legal malpractice and breach of fiduciary duty, and alleged that, unbeknownst to Pendergest-Holt at the time, the night before Sjoblom met with her to prepare her to testify before the SEC, Sjoblom had solicited a multimillion-dollar retainer from Allen Stanford to represent Allen Stanford personally.

VI. PLAINTIFFS' INVESTMENTS

86.

All Plaintiffs invested in the Stanford Financial/SIB Ponzi scheme by purchasing CDs or placing their money in other investment accounts from and with SIB. Over the years that Plaintiffs

purchased and maintained investments in SIB, Plaintiffs were repeatedly and uniformly told, either directly by Stanford Financial representatives or via Stanford Financial promotional materials, that, inter alia: (1) an investment in SIB was safer than investing in U.S. banks because SIB did not make loans but instead invested in safe and highly liquid instruments; (2) SIB and Stanford Financial were U.S.-based businesses regulated by the U.S. Government; and (3) that an investment in SIB was completely safe and secure because it was guaranteed and insured by Lloyd's, was regulated by the Antiguan banking regulatory commission and by an "outside" audit firm and subjected to regular, "stringent" risk management examinations. All of this was false.

87.

During the time that Plaintiffs purchased and maintained investments in SIB, Stanford Financial sales representatives and promotional materials repeatedly and uniformly omitted to inform Plaintiffs that, *inter alia*: (1) SIB was not regulated by the U.S. Government; (2) Plaintiffs' investments in SIB were <u>not</u> insured; (3) SIB was operating illegally as an unregistered investment company soliciting and selling unregistered securities by, from and through Houston, Texas; (4) that their money invested in SIB was not invested in safe secure and liquid instruments; and (5) that 80% of SIB's assets were invested in illiquid, high risk investments that included an unsecured $1.6 billion loan to Allen Stanford; (6) SIB was not regulated or supervised by the Antiguan Government and was only audited by a one man "mom and pop" audit shop under the control of Allen Stanford; and (6) that Stanford

Financial (assisted by Defendants and others) was perpetuating a massive Ponzi scheme by, *inter alia*, engaging in conduct designed to evade regulation in various countries, including by the SEC, and was actively engaged in efforts to thwart SEC investigations of Stanford Financial and SIB from 2005 through February 2009.

88.

Based on the representations and omissions of material fact made to Plaintiffs repeatedly and uniformly over the years, both in person by Stanford Financial sales representatives and via Stanford Financial promotional materials, Plaintiffs decided to, and did, invest money in, and maintain investments in, the SIB CDs.

VII. PLAINTIFF CLASS

89.

Plaintiffs are persons who in many cases, invested their life savings and retirement funds with Stanford Financial (through SIB) because they considered Stanford Financial a safe investment company because it was allegedly "based" in the United States and therefore subject to U.S. laws and regulations. In reliance on Stanford Financial's fraudulently crafted "image" as a Texas-based financial services group, and in further reliance on the illusion of safety and security, Plaintiffs and the Class transferred billions of dollars to Stanford for investment in SIB.

90.

Throughout this time period, and up until the SEC intervention into Stanford Financial in February 2009, Plaintiffs continued to receive

monthly account statements from Stanford showing that their money had been invested in the SIB CDs and were in fact profitable. At no time were Plaintiffs ever advised that Stanford Financial had invested their money in risky, "illiquid" ventures similar to a hedge fund; that SIB had no real insurance that would protect Plaintiffs' investments; that the only "oversight" SIB was subjected to was a one man "mom and pop" audit firm in Antigua that was completely dominated by Stanford; and that people like Defendants and Leroy King were complicit in protecting and insulating Stanford from regulatory scrutiny. Instead, and lacking the type of information that might be gained from a full regulatory disclosure, Plaintiffs were led to believe by Stanford Financial that an investment in SIB was safer than any other investment in the market. Now Plaintiffs stand to lose all of their investments.

VIII. CLASS ALLEGATIONS

91.

Plaintiffs request this case be certified as a class action pursuant to FRCP 23. Thousands of investors have money invested with Stanford Financial through SIB. The number of affected investors are so numerous that joinder of all members is impracticable. There are common questions of law and fact that are common to the class and these common questions predominate over individual issues. The Named Plaintiffs' claims are typical of the class claims. The Named Plaintiffs have no interest adverse to the interests of other members of the Class. The Named Plaintiffs will fairly and adequately protect the class' interests. The Named Plaintiffs have retained counsel experienced and

competent in the prosecution of class action and complex international litigation.

92.

Pursuant to FRCP 23(a) and (b)(3), the Court should certify the following classes and subclasses:

i. All persons or entities that held CD or other investment accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action; and

ii. Such other classes or sub-classes as the Court may determine. Excluded from the class are:

a. Defendants, and their employees and agents; and

b. Any officer, director, employee, or promoter of Stanford Financial, including SIB and SGC, as those entities have been defined herein

93.

The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of fraud on the regulators. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

94.

Pleading in the alternative, Plaintiffs SAMUEL TROICE and PUNGA PUNGA FINANCIAL, LTD, on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all Mexican citizens and legal residents, or entities owned or controlled by Mexican citizens or legal residents, that held investment accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC and Stanford Venezuela, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of fraud on the regulators. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

95.

Pleading in the alternative, Plaintiffs HORACIO MENDEZ, and ANNALISA MENDEZ on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all United States citizens and legal

residents, or entities owned or controlled by United States citizens or legal residents, that held investment accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB and SGC, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of fraud on the regulators. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

IX. STATUTE OF LIMITATIONS DEFENSES

Discovery Rule/Inquiry Notice

96.

The SEC filed an action against Allen Stanford and SIB *et al.* on February 17, 2009, and on that same day the Receiver was appointed. Plaintiffs did not discover, and could not with the exercise of reasonable diligence have discovered, the true nature of the injury caused by Stanford Financial, SIB or Defendants until then. Moreover, the wrongful acts and conspiracy by Defendants were inherently undiscoverable, and Plaintiffs were not

aware of facts that would have put them on inquiry notice as to Defendants' role in Stanford's fraud and conspiracy until now.

X. CLASS CAUSES OF ACTION

(The Following Causes of Action Are Plead on Behalf of All Plaintiffs Individually and on Behalf of a Class of All Others Similarly Situated)

A. Aiding and Abetting Violations of the Texas Securities Act

1. Sales of Unregistered Securities

97.

Defendants are liable as "aiders" for sales of unregistered securities to Plaintiffs. In particular, by their actions described herein, Defendants provided substantial assistance to SIB and Stanford Financial and materially aided Stanford Financial and SIB to sell unregistered securities to Plaintiffs from, by and through Texas. As argued by the SEC in its original Complaint, the CDs offered and sold by Stanford Financial and SIB constitute "securities" under the relevant securities law jurisprudence. By agreeing to assist Stanford Financial evade regulatory scrutiny by intentionally misleading the SEC during its 2005-2006 investigation of Stanford, and continuing into 2008-2009, Defendants knew or should have known that they were assisting and perpetuating the sale of unregistered securities to Plaintiffs from, by and through Texas. But for Defendants' participation, Stanford Financial and SIB could not have continued to sell unregistered securities to Plaintiffs from, by and through Texas because the SEC would have intervened and shut

the Ponzi scheme down prior to 2009. Upon information and belief, SIB sold well in excess of $4 billion in CDs between the summer of 2005 and February 2009.

98.

Defendants had general awareness that they were assisting an offshore, unregistered investment company sell unregistered securities from, by and through Texas. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct. In assisting an offshore bank sell securities through a Houston-based investment company enterprise, Defendants were, at the very least, subjectively conscious of a risk of illegality. None of the CDs sold to Plaintiffs were ever registered with the Texas Securities Commission and therefore they were sold to Plaintiffs as unregistered securities in violation of the Texas Securities Act. Defendants acted intentionally or with reckless disregard for the truth and the law. As a result of Defendants' conduct in materially aiding Stanford Financial and SIB to sell unregistered securities from, by and through Texas, Plaintiffs have lost their investments. Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

2. Sales of Securities by Unregistered Dealers

99.

Defendants aided and abetted SIB and Stanford Financial in the sale of securities to Plaintiffs from,

by and through the State of Texas without being registered as a dealer, in violation of Sections 12(A), 33(A)(1), and 33(F)(2) of the Texas Securities Act. Specifically, and as alleged herein, Defendants knew or should have known that Stanford Financial and SIB were collectively functioning as an unregulated, unregistered investment company, called "Stanford Financial", selling hedge or mutual fund participation units from, by and through Texas to investors and then pooling its customers' money together to make illiquid, speculative investments.

100.

Stanford Financial, an investment company not organized or otherwise created under the laws of the United States or of a State, directly or indirectly, singly or in concert with others, including Defendants, made use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, securities of which SIB was the issuer on behalf of Stanford Financial, without obtaining an order from the Texas State Securities Board permitting it to register as an investment company "dealer".

101.

Defendants intentionally and actively aided and abetted Stanford Financial to operate as an illegal hedge or mutual fund in Texas and sell securities from, by, and through Texas, by means of the conduct described herein. With full knowledge that Stanford Financial and SIB were collectively acting as an unregistered securities investment company "dealer" in Texas selling securities from, by, and through Texas, and that Stanford Financial and SIB were being operated and "run" from Texas,

Defendants aided and abetted, materially and substantially assisted, and perpetuated Stanford Financial and SIB's violations of the Texas Securities Act by their conduct described herein.

102.

Defendants had general awareness that they were assisting an offshore, unregistered investment company "dealer" sell unregistered securities from, by and through Texas and otherwise engage in illegal conduct. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct in intentionally engaging in conduct designed to mislead the SEC and thwart the SEC's investigation of Stanford Financial from 2005 through February 2009. In assisting an offshore bank deceive the SEC so that it could continue to sell securities through a Houston-based investment company enterprise, Defendants were, in fact, absolutely aware they were engaged in illegal conduct. In performing the acts described herein to aid and abet the sale of securities in Texas by an unregistered dealer, Defendants acted with the intent to perpetuate the sale of securities by an unregistered dealer, or acted with reckless disregard for the truth or the law. In fact, in their zeal to assist SIB, an offshore bank operating completely outside the regulatory purview of U.S. securities and banking laws, to sell its securities from, by, and through Texas via Stanford Financial, Defendants acted with wanton and arrogant disregard for the protections afforded by the Texas Securities Act. As a result of Defendants' conduct in aiding and abetting the sale of securities in Texas by unregistered securities dealers, Plaintiffs have lost their investments. Defendants' violations of the

Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

3. Untruth or Omission

103.

Defendants, acting with intent to deceive or with reckless disregard for the truth or the law, materially and substantially aided Stanford Financial and SIB and their principals in the sale of securities through the use of untrue representations or materially misleading omissions. In particular, and as set forth in the SEC's Amended Complaint, the Davis Plea Agreement (Exhibit 1), and the Indictment (Exhibit 2), Stanford Financial was a massive Ponzi scheme that was perpetuated by the continued sales of the SIB CDs to unsuspecting investors like Plaintiffs. In particular, Stanford Financial uniformly led Plaintiffs, verbally and through written marketing materials prepared and disseminated via Stanford Financial's Houston office, to believe that their money was being invested in safe, liquid investments that were completely insured, which was a material misstatement because the money was not invested in safe, liquid and fully insured investments, but rather was pooled together with other investors' money and used to finance Stanford Financial's principals' profligate lifestyles and to invest in long term, illiquid and high risk investments like private equity and real estate and unsecured loans to Allen Stanford. Moreover, Stanford Financial omitted to inform Plaintiffs that it was selling them unregistered securities and that

it was operating as an unregistered, illegal mutual fund in violation of the Investment Company Act and the Texas Securities Act.

104.

Defendants had general awareness that they were involved in improper activity and that they were assisting an offshore, unregistered investment company sell unregistered securities from, by and through Texas. With knowledge that Stanford Financial and SIB, acting in concert as an unregistered investment company, were misleading investors about the scope and nature and extent of regulatory oversight over Stanford Financial and SIB, and with reckless disregard for the truth and the law, Defendants provided substantial assistance to SIB and Stanford Financial in agreeing to mislead the SEC so as to thwart the SEC's investigation of Stanford Financial from 2005 through February 2009 and thereby materially aided the sales of securities through the use of untruths and materially misleading omissions. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct in agreeing to assist Stanford and his criminal operation. In assisting an offshore bank deceive the SEC so that it could continue to sell securities through a Houston-based investment company enterprise, Defendants were, absolutely aware they were engaged in illegal conduct. Defendant's conduct described herein was designed to perpetuate the Stanford Financial's Ponzi Scheme; indeed Sjoblom himself stated that "our livelihood" depended on Pendergest-Holt's ability to deceive the SEC during her presentation. Defendants' actions as described herein allowed Stanford Financial and SIB to continue to sell

securities to Plaintiffs from, by and through Texas using untruths and materially misleading omissions.

105.

In performing the acts described herein to aid and abet the sale of securities through the use of untruths and materially misleading omissions, Defendants acted with the intent to perpetuate the sale of securities by Stanford Financial, or acted with reckless disregard for the truth or the law. In fact, Defendants acted with wanton and arrogant disregard for the truth and for the protections afforded by the Texas Securities Act by engaging in the conduct described herein. Defendants' actions in aiding and abetting Stanford Financial's fraud by helping Stanford obstruct regulatory investigations allowed Stanford Financial and SIB to continue in business and thereby caused Plaintiffs to enter into transactions or maintain their investments with SIB, which they have now lost. As a result of Defendants' conduct in aiding and abetting the sale of securities from, by and through Texas using untruths and materially misleading omissions, Plaintiffs have lost their investments. Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

4. Co-Conspirator Liability

106.

Defendants are jointly and severally liable as co-conspirators for Stanford Financial and SIB's primary violations of the Texas Securities Act. In

particular, the central aim of Stanford's Ponzi scheme conspiracy extended to concealing the fraudulent nature of Stanford Financial and SIB and their operations and activities from regulators around the world. There was a meeting of the minds between Stanford, Davis and others beginning in 1991 and extending until February 2009 as to the need to conceal Stanford Financial's true nature and activities and to evade regulatory scrutiny at all levels and in all countries. This meeting of the minds grew to include other participants, including Pendergest-Holt, Defendant Alvarado, Rodriguez Tolentino, members of the Antiguan Government, and, eventually, Defendants Chadbourne, Proskauer and Sjoblom. Defendant Sjoblom, while employed by Chadbourne, joined the conspiracy and had a meeting of the minds with the principals of Stanford Financial in August 2005 and agreed to assist Stanford Financial to conceal the fraudulent nature of its activities by evading regulatory scrutiny from 2005 through February 2009, which concealment was crucial and central to the perpetuation of Stanford's Ponzi scheme. Sjoblom continued to be actively involved in furthering the objective of the conspiracy upon his employment with Proskauer later in 2006. Defendants therefore knowingly combined together and with the principals of Stanford Financial to assist Stanford Financial to frustrate the investigatory efforts of the SEC and other U.S. regulatory agencies so as to enable Stanford Financial to continue operating as an "outlaw", unregulated, unregistered investment company/dealer, and to sell unregistered securities from, by and through the State of Texas from 2005 through 2009.

107.

As described herein, Defendants took various overt acts designed to assist Stanford Financial and SIB to accomplish the goal of shielding Stanford Financial and SIB from regulatory scrutiny and therefore allow Stanford Financial and SIB to continue selling CDs from, by and through the State of Texas and operate as an unregistered securities dealer selling unregistered securities from Texas. These overt acts in furtherance of the conspiracy included lying to the SEC about Stanford Financial and SIB and encouraging others to lie to and otherwise mislead and deceive the SEC in an ongoing SEC investigation. By doing so, Defendants acted pursuant to their meeting of the minds with Stanford, Davis and others in pursuit of the common purpose of the conspiracy — to conceal the fraudulent nature of Stanford Financial's activities and shield Stanford Financial from regulatory scrutiny by thwarting an active investigation by the SEC so as to allow Stanford Financial and SIB to continue in business and continue perpetuating the Ponzi scheme. Even though Defendants (with the exception of Alvarado) joined the conspiracy late, in 2005, under Texas law a party who joins in a conspiracy is jointly and severally liable "for *all acts done by any of the conspirators* in furtherance of the unlawful combination." Defendants' conspiracy with Stanford Financial to violate the Texas Securities Act is a proximate cause of actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

108.

Defendants' actions in furthering the conspiracy to conceal, hinder and obstruct regulatory investigations were taken during the conspiracy's operation. Indeed Defendants' actions were taken to protect the Stanford Financial scheme and to assist Stanford Financial to avoid regulatory intervention so that Stanford Financial and SIB could continue in business and continue selling CDs and continue paying Defendants' legal bills. Therefore Defendants' actions were part of a continuing activity that was illegal in nature and that was essential to and therefore in furtherance of the survival of an ongoing Ponzi scheme conspiracy. But for the overt acts taken by the members of the regulatory obstruction conspiracy to further the objectives of the Ponzi conspiracy described herein, Stanford would not have been able to carry out his Ponzi scheme, and billions of dollars belonging to the Plaintiffs and the Class would not have been lost.

B. Aiding and abetting/Participation in a Fraudulent Scheme

109.

By their conduct described herein, Defendants aided and abetted and participated with Stanford Financial and SIB in a fraudulent scheme, making Defendants directly liable for fraud. In particular, Defendants made the conscious decision in August 2005 and continuing through 2009 to assist and enable Stanford Financial to continue to sell SIB CDs in a massive Ponzi scheme based on the misrepresentations that investments in Stanford Financial and SIB were regulated because SIB was subject to audits and risk management reviews by

the Antiguan FSRC and because Stanford Financial was regulated by the SEC. Defendants, with full knowledge of the cozy relationship between Stanford and Leroy King in Antigua, participated in the fraudulent scheme by agreeing to assist Stanford Financial shield itself from regulatory scrutiny and thwart active investigations by the SEC, all with the goal of perpetuating Stanford Financial's business. Said actions by Defendants in combination with Stanford Financial are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in Stanford Financial as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

C. Civil Conspiracy

110.

Defendants conspired with each other and with Allen Stanford, Jim Davis, Pendergest-Holt, Rodriguez Tolentino, King, and others to commit the wrongful conduct described herein, including fraud, theft of fiduciary property, breach of fiduciary duty, and violations of the Texas Securities Act. Defendants are each responsible for all wrongdoing done by each and the other members of the conspiracy, including Allen Stanford, Davis, Pendergest-Holt, Rodriguez Tolentino, King, SIB, and others, in furtherance of the unlawful conspiracy and enterprise.

111.

Together with Allen Stanford, Davis, Pendergest-Holt, Rodriguez Tolentino, King, and others, the Defendants joined in a conspiracy (which had been ongoing since at least 1991) to shield

Stanford Financial from regulatory scrutiny and thwart active investigations by the SEC so as to allow Stanford Financial and SIB to continue to sell SIB CDs in a massive Ponzi scheme for the pecuniary benefit of Stanford and Stanford Financial and, thereby, Defendants. The object of the ongoing conspiracy was to help insulate and shield Stanford Financial and SIB from regulatory scrutiny and so assist said entities to continue to sell the SIB CDs and conceal Stanford Financial's ongoing fraudulent activities. Central to Stanford's ability to perpetuate a massive Ponzi scheme was the ability to conceal the true nature of Stanford Financial's activities and investment portfolio by blocking regulatory scrutiny at every level and in every country. There was a meeting of the minds in August 2005 between Defendant Sjoblom (while employed at Chadbourne) and Allen Stanford, Davis, Pendergest-Holt, Rodriguez Tolentino, King, and others as to the central objective of evading and concealing Stanford Financial's activities from regulators and a meeting of the minds between Defendants and Allen Stanford, Davis, Pendergest-Holt, Rodriguez Tolentino, King, and others, as to the means for carrying out the scheme, being the active obstruction of an ongoing regulatory investigation into Stanford Financial's business affairs by the SEC and other governmental agencies, between August 2005 and February 2009. Sjoblom carried this meeting of the minds and agreement to conspire over to Proskauer when he joined that firm later in 2006.

112.

During all relevant times, Defendants, in furtherance of the conspiracy and/or aiding or abetting Allen Stanford, Davis, Pendergest-Holt,

Rodriguez Tolentino, King, and others, in furtherance of the common enterprise, engaged in specific overt acts as described herein. Defendants engaged in overt acts in furtherance of the Stanford Financial CD conspiracy and assisted Allen Stanford, Davis, Pendergest-Holt, Rodriguez Tolentino, King, and others to effectuate their illicit scheme to conceal Stanford Financial's activities by obstructing regulatory investigation and enforcement in order to perpetuate and keep Stanford Financial and SIB alive and in business.

113.

Defendants conspired to conduct, and participated in conduct including violations of securities laws and fraud. To wit, over the span of almost four years, from August 2005 through February 2009, Defendant Sjoblom, while employed at Chadbourne and later at Proskauer, engaged in a conspiratorial meeting of the minds with Allen Stanford, Davis, Pendergest-Holt, Defendant Alvarado, Rodriguez Tolentino, King, and others, and in furtherance thereof knowingly participated in conduct designed to perpetuate and keep alive a massive Ponzi scheme by agreeing to assist, and actively assisting, Stanford Financial to obstruct SEC investigations and shield Stanford Financial and SIB from regulators, as described herein. Defendants' conduct was part of continuing activity that was essential to and therefore in furtherance of the survival of the Stanford Ponzi scheme, which was an ongoing operation when Defendants joined the conspiracy. Frustration of investigatory efforts by the SEC and other agencies in a highly regulated environment such as securities was central to the success and longevity of the overall Stanford Ponzi scheme

conspiracy. Stanford's Ponzi scheme proximately caused Plaintiffs to lose their investments, and Defendants, by joining in conduct designed to conceal and facilitate Stanford Financial's illicit conduct, which concealment was central to the perpetration of the Stanford Ponzi scheme, are jointly and severally liable with Stanford, Stanford Financial and SIB for all of Plaintiffs' losses.

D. NEGLIGENT RETENTION/NEGLIGENT SUPERVISION

114.

Defendants Proskauer Rose and Chadbourne Parke are directly liable to Plaintiffs for negligent retention and supervision of their employee Sjoblom. From the time that Sjoblom joined the conspiracy described here in August 2005 until sometime in September 2006, Sjoblom was employed by Chadbourne Parke. Thereafter, from September 2006 through the present time, Sjoblom has been an employee of Proskauer Rose. Defendants Proskauer Rose and Chadbourne Parke owed a duty to Plaintiffs to use ordinary care in the hiring, supervision and retention of their agents and employees and in monitoring the activities of their employee representing an offshore bank selling financial products in the United States that was under investigation by the SEC. Defendants Proskauer Rose and Chadbourne Parke knew or should have known that Sjoblom had been specifically retained by Stanford Financial to help it thwart an active SEC investigation of its activities. As a result, Defendants Proskauer Rose and Chadbourne Parke breached the duty owed to Plaintiffs by not exercising ordinary care in the

hiring, supervision and retention of Sjoblom and in not monitoring his activities with regard to this specific, inherently high risk, client matter. Defendants' breach of their duties and failure to supervise has proximately caused damages to Plaintiffs.

XI. RESPONDEAT SUPERIOR

115.

Defendants Proskauer Rose and Chadbourne Parke are liable for the tortious acts of their employee, Sjoblom, and all contacts with the State of Texas by said employee should be attributed to Proskauer Rose and Chadbourne Parke for purposes of the personal jurisdiction analysis. From the time that Sjoblom joined the conspiracy described herein in August 2005 until sometime in September 2006, Sjoblom was employed by Chadbourne Parke. Thereafter, from September 2006 through the present time, Sjoblom has been an employee of Proskauer Rose. Sjoblom was acting within the course and scope of his respective employments with Proskauer Rose and Chadbourne Parke, and in furtherance of said law firms' respective businesses, when he engaged in the wrongful conduct described herein.

XII. ACTUAL DAMAGES

116.

Plaintiffs and the putative Class have suffered the loss of well in excess of $7 billion that was proximately caused by the wrongful conduct of Defendants in conspiracy with Allen Stanford as described herein. In the alternative, Defendants are liable for all damaged caused to Plaintiffs and the

putative Class during the time period 2005-2009 during which Defendants participated in the conspiracy to obstruct the SEC investigation into Stanford Financial and SIB's fraudulent sales practices, amounting to well in excess of $4 billion in SIB CDs sales to Plaintiffs and the Class. In addition, Plaintiffs are entitled to recover their just and reasonable attorneys' fees, for it would be inequitable not to award such fees to them. Plaintiffs have retained the undersigned attorneys and have agreed to pay them a reasonable attorneys' fee for their work.

117.

The exact amount of maximum damages proximately caused by Defendants' wrongful conduct is unknown, but Plaintiffs believe that those damages total between alternatively between $4 billion and $7 billion.

XIII. PUNITIVE DAMAGES

118.

The wrongful conduct set forth herein constitutes fraud or malice, willful acts or omissions, or gross neglect within the meaning of §41.003, Tex. Civ. Prac. & Rem. Code. Plaintiffs are entitled to recover punitive damages in an amount necessary to punish the Defendants and to deter similar conduct of others in the future.

119.

All conditions precedent to filing this Complaint have been met.

XIV. JURY DEMAND

120.

Plaintiffs demand a trial by jury.

PRAYER

WHEREFORE, Plaintiffs pray the Defendants be summoned to answer this Complaint, that this action be certified as a class action, and that the case be tried before a jury and that upon final judgment the classes and sub-classes as set forth in each cause of action hereof recover their damages as alleged herein, including their actual damages, punitive damages, and their costs and expenses of suit, including reasonable attorneys' fees. Plaintiffs pray for such other relief to which they may be justly entitled.

Respectfully submitted,

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* * *

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	**FILED** 8/27/09 Michael N. Milby, Clerk
v.	§	
	§	**Criminal No. H-09-335**
JAMES M. DAVIS	§	

PLEA AGREEMENT

The United States of America, by and through its United States Attorney for the Southern District of Texas and the Fraud Section of the Criminal Division of the Department of Justice, the defendant, James M. Davis, and the defendant's counsel, David Finn, have entered into the following plea agreement (the "Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Agreement

1. (a) The defendant agrees to plead guilty to Counts One, Two and Three of the Information. Count One charges the defendant with conspiracy to commit wire, mail and securities fraud, in violation of 18 United States Code, Section 371. Count Two charges the defendant with mail fraud, in violation of 18 United States Code, Section 1341. Count Three charges the defendant with conspiracy to obstruct an SEC proceeding, in violation of 18 U.S.C. § 371. By entering this Agreement, the defendant waives any right to have the facts that the law makes essential to the punishment of Counts One, Two or Three

either charged in the Information, proved to a jury or proven beyond a reasonable doubt.

(a) The defendant agrees that the facts of this case support the following Sentencing Guidelines calculation:

Section 2B1.1(a) — Base offense level for wire fraud:	7
Section 2B1.1(b)(1)(K) — Loss of more than $400 million	30
Section 2B1.1(b(2)(B)— More than 250 victims	6
Section 2B1.1(b)(9)(C, D) — Substantial part of scheme committed outside United States and otherwise used sophisticated means	2
Section 2B1.1(b)(14)(B) — Affecting safety and soundness of financial institution and endangering solvency or financial security of 100 or more victims	4
Section 3B1.3 — Abuse of position of trust	2
Section 2B1.1(b)(14)(C) — Combination of enhancement for more than 250 victims and enhancement for safety and soundness of financial institution and endangering the solvency or security of 100 or more victims, equals 10, therefore reduced to 8	-2
Section 3E1.1(a, b) — Acceptance of responsibility	-3
Total Offense Level — Adjusted	46

(b) The defendant further agrees to recommend at the time of sentencing that the Sentencing Guidelines provide a fair and just resolution based on the facts of this case, and that no downward departure or variances are appropriate other than the reduction for acceptance of responsibility discussed in Paragraph Thirteen and the potential for a downward departure based on substantial assistance pursuant to U.S.S.G. § 5K1.1 as discussed in Paragraph Seven.

Punishment Range

2. The statutory penalty for the violation of Title 18, United States Code, Section 371, in Counts One and Three, is not more than five years imprisonment and/or a fine of up to $250,000.00. The statutory penalty for the violation of Title 18, United States Code, Section 1341, in Count Two, is not more than twenty years imprisonment and/or a fine of up to $250,000.00. Additionally, on all three counts, the defendant may receive a term of supervised release after imprisonment of up to three (3) years. Title 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release which may be imposed as part of his sentences, then defendant may be imprisoned for the entire term of supervised release, not to exceed two years, without credit for time already served on the term of supervised release prior to such violation. Title 18 U.S.C. §§ 3559(a)(4) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to 18 U.S.C. § 3013(a)(2)(A), immediately after sentencing the defendant will pay to the Clerk of the United States District Court a special assessment in the amount of $100.00 per count of conviction. The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Fine and Reimbursement

4. The defendant understands that under the *United States Sentencing Commission Guidelines Manual* (hereafter referred to as *"Sentencing Guidelines"* or "U.S.S.G."), the Court is permitted to order the defendant to pay a fine that is sufficient to reimburse the United States for the costs of any imprisonment or term of supervised release, if any is ordered.

5. The defendant agrees that because the offenses of conviction occurred after April 24, 1996, restitution is mandatory without regard to Davis's ability to pay and that the Court must order Davis to pay restitution for the full loss caused by his criminal conduct pursuant to Title 18, United States Code, Section 3663A, provided, however, that the United States agrees that the value of any property returned to victims through the forfeiture and remission process shall be credited against any order of restitution.

6. The defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500) prior to sentencing if he is requested to do so. In the event

that the Court imposes a fine or orders the payment of restitution as part of the defendant's sentence, the defendant shall make complete financial disclosure by truthfully executing a sworn financial statement immediately following his sentencing.

Cooperation

7. The parties understand that the Agreement carries the potential for a motion for departure pursuant to U.S.S.G. § 5K1.1. The defendant understands and agrees that whether such a motion is filed will be determined solely by the United States. Should the defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to U.S.S.G. § 5K1.1. The defendant agrees to persist in his guilty plea through sentencing and to cooperate fully with the United States. The defendant understands and agrees that the United States will request that sentencing be deferred until his cooperation is complete.

8. The defendant understands and agrees that the term "fully cooperate" as used in this Agreement includes providing all information relating to any criminal activity known to the defendant. The defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

(a) The defendant agrees that this Agreement binds only the United States Attorney for the Southern District of Texas, the Fraud Section of the Criminal Division of the Department of Justice and the defendant; it does not bind any other United

States Attorney or any other component of the Department of Justice.

(b) The defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States.

(c) The defendant agrees to voluntarily attend any interviews and conferences as the United States may request.

(d) The defendant agrees to provide truthful, complete, and accurate information and testimony; and he understands that any false statements he makes to the Grand Jury, at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes.

(e) The defendant agrees to provide to the United States all documents in his possession or under his control relating to all areas of inquiry and investigation.

(f) Should the recommended departure, if any, not meet the defendant's expectations, the defendant understands that he remains bound by the terms of this Agreement and cannot, for that reason alone, withdraw his plea.

Waiver of Appellate Rights

9. The defendant is aware that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. The defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined on all other grounds set forth in 18 U.S.C. § 3742 except he reserves the right to

appeal a sentence above the statutory maximum. Additionally, the defendant is aware that 28 U.S.C. § 2255 affords the right to contest or "collaterally attack" a conviction or sentence after the conviction or sentence has become final. The defendant waives the right to contest his conviction or sentence by means of any post-conviction proceeding, including but not limited to proceedings authorized by 28 U.S.C. § 2255. If at any time the defendant instructs his attorney to file a notice of appeal on grounds other than those specified above, the United States will seek specific performance of this provision.

10. In exchange for this Agreement with the United States, the defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed, in the event that (a) the defendant's conviction is later vacated for any reason, (b) the defendant violates any provision of this Agreement, or (c) the defendant's plea is later withdrawn.

11. In agreeing to these waivers, the defendant is aware that a sentence has not yet been determined by the Court. The defendant is also aware that any estimate of the possible sentencing range under the *Sentencing Guidelines* that he may have received from his counsel, the United States, or the Probation Office is a prediction, not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office, or the Court. The United States does not make any promise or representation concerning what sentence the defendant will receive. The defendant further understands and agrees that the *Sentencing*

Guidelines are "effectively advisory" to the Court. *United States v. Booker*, 125 S.Ct. 738 (2005). Accordingly, the defendant understands that, although the Court must consult the *Sentencing Guidelines* and must take them into account when sentencing him, the Court is bound neither to follow the *Sentencing Guidelines* nor to sentence the defendant within the guideline range calculated by use of the *Sentencing Guidelines*.

12. The defendant understands and agrees that each and all of his waivers contained in this Agreement are made in exchange for the corresponding concessions and undertakings to which this Agreement binds the United States.

The United States' Agreements

13. The United States agrees to each of the following:

(a) At the time of sentencing, the United States agrees not to oppose the defendant's anticipated request to the Court and the United States Probation Office that he receive a two level downward adjustment pursuant to U.S.S.G. § 3E1.1(a) should the defendant accept responsibility as contemplated by the *Sentencing Guidelines*. The United States is not required to make this recommendation if Davis (1) fails or refuses to timely entire his plea and make a full, accurate and complete disclosure to the United States and the Probation Department of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to the United States prior to entering this Agreement; or (3) commits any misconduct after entering into this Agreement,

including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

(b) If the defendant qualifies for an adjustment under U.S.S.G. Section 3E1.1(a), the United States agrees to file a motion for an additional one level departure based on the timeliness of the plea or the expeditious manner in which the defendant provided complete information regarding his/her role in the offense if the defendant's offense level is 16 or greater.

(c) The United States agrees that the appropriate Guidelines calculation in this case is the calculation described in Paragraph 1(b) above.

United States' Non-Waiver of Appeal

14. The United States reserves the right to carry out its responsibilities under the *Sentencing Guidelines*. Specifically, the United States reserves the right:

(a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;

(b) to set forth or dispute sentencing factors or facts material to sentencing;

(c) to seek resolution of such factors or facts in conference with the defendant's counsel and the Probation Office;

(d) to file a pleading relating to these issues, in accordance with U.S.S.G. § 6A1.2 and 18 U.S.C.§ 3553(a); and

(e) to appeal the sentence imposed or the manner in which it was determined. If the United States appeals Davis's sentence, then Davis shall be released from his waiver of appellate rights.

Sentence Determination

15. The defendant is aware that the sentence will be imposed by the Court after consideration of the *Sentencing Guidelines*, which are only advisory, as well as the provisions of 18 U.S.C. § 3553(a). The defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense(s) to which the defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable *Sentencing Guidelines*. The defendant understands and agrees that the parties' positions regarding the application of the *Sentencing Guidelines* do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw a guilty plea, and he will remain bound to fulfill all of his obligations under this Agreement.

Rights at Trial

16. The defendant represents to the Court that he is satisfied that his attorney has rendered effective assistance. The defendant understands that by entering into this Agreement, he surrenders certain rights as provided herein. The defendant

understands that the rights of a defendant include the following:

(a) If the defendant persisted in a plea of not guilty to the charges, the defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the Court all agree.

(b) At a trial, the United States would be required to present witnesses and other evidence against the defendant. The defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(c) At a trial, the defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

17. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The following facts, among others, would be offered to establish the defendant's guilt:

(a) Beginning in at least 1988, **JAMES M. DAVIS (DAVIS)** began serving as Controller of Guardian International Bank, Ltd (Guardian), a bank chartered in Montserrat and owned by Robert

Allen Stanford (Stanford). Soon after **DAVIS** became Controller, Stanford requested that, in order to show fictitious quarterly and annual profits, DAVIS make false entries into the general ledger for the purpose of reporting false revenues and false investment portfolio balances to the banking regulators. In late 1989, Stanford closed Guardian in Montserrat due, in part, because of his concern with the heightened scrutiny being imposed upon Guardian by bank regulators in Montserrat.

(b) In early 1990, Stanford moved Guardian's banking operations to Antigua under the name Stanford International Bank, Ltd. (SIBL), of which he was the sole shareholder and for which **DAVIS** continued to serve as Controller through approximately 1992, when **DAVIS** became Chief Financial Officer of Stanford Financial Group (SFG). SFG was the parent company of SIBL and a web of other affiliated financial services entities, including Stanford Group Company (SGC) and Stanford Capital Management (SCM).

(c) SIBL's primary investment product was referred to as a Certificate of Deposit (CD) which SIBL would solicit to potential investors in the United States and elsewhere through SFG broker-dealers, sometimes referred to as "Financial Advisors" (FAs). By 2008, SIBL had sold CDs resulting in liabilities totaling over $7 billion to investors in the United States and elsewhere. Stanford, **DAVIS**, and their conspirators promoted SIBL's investments as being well-managed, safe and secure, claimed that SIBL's investment strategy was to minimize risk and achieve liquidity, and falsely touted in SIBL's Annual Reports beginning in at least 1999 an almost year-by-year percentage and

dollar increase in the purported value of SIBL's earnings, revenue and assets.

(d) Prior to purchasing SIBL CDs, potential investors were required to provide their basic biographical and financial information in the form of a Subscription Agreement. Subscription Agreements regarding the investors were routinely sent from Stanford Group Company in Houston, Texas to SIBL in Antigua. CDs and account statements regarding the CDs were also routinely sent by mail to investors, including an account statement driven by the false investment and revenue values for an investor (identified as "Investor TA" in Count 2 of the Information) which on November 30, 2008 was sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.

(e) Stanford, **DAVIS** and their conspirators further promoted the sale of SIBL's CDs by representing to investors that SIBL's operations and financial condition were being scrutinized by Antigua's bank regulator, the Financial Services Regulatory Commission (FSRC), and that SIBL's financial statements were subject to annual examination and inspections by the FSRC and audits by an independent outside auditor.

(f) Stanford, **DAVIS**, Chief Investment Officer Laura Pendergest-Holt (Holt) and other conspirators created and perpetuated the false impression to investors, potential investors, and the majority of SFG employees that Holt was responsible for overseeing and monitoring SIBL's entire portfolio of non-cash assets and that she managed all of those assets through a global network of money managers. In order to continue to effectuate the scheme, on

December 7, 2005, Stanford and others, appointed Holt to the SIBL "Investment Committee." The purpose of this appointment was to continue to dupe the CD investors into falsely believing that Holt understood and "managed" SIBL's entire investment portfolio.

(g) Unknown to investors, Stanford, **DAVIS,** Holt and other conspirators internally segregated SIBL's investment portfolio into three investment tiers: (a) cash and cash equivalents ("Tier I"); (b) investments with "outside money managers," sometimes also referred to as "outside portfolio managers" ("Tier II"); and (c) other assets ("Tier III"). In actuality, Holt's management of SIBL's assets was confined to those assets contained in Tier II which, by 2008 made up only 10% of SIBL's entire portfolio. In fact, by 2008, approximately 80% of SIBL's investment portfolio was made up of illiquid investments, including grossly overvalued real and personal property that SIBL had acquired from Stanford-controlled entities at falsely inflated prices. At least $2 billion dollars of undisclosed, unsecured personal loans from SIBL to Stanford were concealed and disguised in SIBL's financial statements as "investments."

(h) At Stanford's direction and assisted by SFG' s Chief Accounting Officer, Gilberto Lopez (Lopez), and the Global Controller for an affiliate of SFG, Mark Kuhrt (Kuhrt), **DAVIS** regularly created false books and records in which the value of the investment portfolio was further fraudulently adjusted by percentage increases to produce false investment and revenue values. As a result, SIBL's values for revenue and investments were falsified on a routine basis.

(i) From at least 2002, **DAVIS**, at the request of Stanford, would prepare with the assistance of Lopez and Kuhrt, fictitious SIBL investment reports, which were provided to the Antiguan FSRC on a quarterly basis, again falsely inflating the value of SIBL's investments. These false forms continued to be provided to the FSRC on a quarterly basis until at least September 2008. Kuhrt would send the false documents to SIBL in Antigua. SIBL Executive A would then execute the documents and provide them to the FSRC.

(j) Stanford was insistent that SIBL appear to show a profit each year. Stanford and **DAVIS** would collaborate to select a false revenue number. **DAVIS** would then send the collaborative false revenue numbers to Lopez and Kuhrt.

(k) To create the falsely inflated values for SIBL's assets, **DAVIS** would extrapolate from the values attributed to a portion of SIBL's investment portfolio which was monitored by Holt and managed by money managers. **DAVIS,** at Stanford's urging, would multiply those actual values by artificial percentage factors necessary to equal the value for depositor liabilities. By email or personal delivery, **DAVIS** would send the false investment valuation report to Kuhrt, who then sent it to SIBL.

(l) Initially, **DAVIS** did the calculations manually, but later a computer spreadsheet was created which was useful in generating the bogus revenue numbers. Every year, SIBL would prepare a budget projecting growth. Stanford, **DAVIS,** Lopez, Kuhrt and other conspirators would then use the "budgeted" numbers to develop falsely inflated revenue numbers which would be claimed as the

"actual" revenue numbers to generate the desired Return on Investment (ROI). At Kuhrt's direction, subordinate employees in SFG's accounting group would be given a secret instruction sheet informing them as to how to make the changes to generate the false adjusted revenue figures, including the steps necessary to obtain approval by Lopez and **DAVIS.** After "backing into" or "reverse engineering" the numbers to match the "budgeted" numbers, Kuhrt would then transmit the inflated revenue numbers from Houston initially, and later from St. Croix when Kuhrt's accounting group moved to St. Croix, to Lopez in Houston, Texas and to **DAVIS** in Mississippi for **DAVIS'** approval. **DAVIS** often would further adjust the already bogus numbers to reach a desired ROI and would transmit to Kuhrt and Lopez the changes to be made.

(m) Kuhrt and Kuhrt' s employees in the accounting group would prepare the false financial statements published in SIBL's annual reports, which Stanford, Lopez and **DAVIS** would review prior to publishing and sending out to investors.

(n) This continued routine false reporting by Stanford, **DAVIS**, Lopez, Kuhrt and their conspirators, upon which CD investors routinely relied in making their investment decisions, in effect, created an ever-widening hole between reported assets and actual liabilities, causing the creation of a massive Ponzi scheme whereby CD redemptions ultimately could only be accomplished with new infusions of investor funds. Stanford, **DAVIS**, Lopez, Kuhrt and their conspirators fraudulently claimed in SIBL's Annual Reports an increase in assets from approximately $1.2 billion in 2001 to approximately $8.5 billion reported in SIBL's

Monthly Report for December 2008. By the end of 2008, Stanford, **DAVIS** and their conspirators falsely represented in SIBL's December monthly report that it held over $7 billion in assets, when in truth and in fact, SIBL actually held less than $2 billion in assets.

(o) By at least 2002, Stanford had introduced **DAVIS** to Leroy King, a bank auditor for the FSRC, a former Ambassador to the United States from Antigua and a former executive at Bank of America in New York. King became Administrator and the Chief Executive Officer (CEO) of the FSRC in approximately 2003.

(p) Sometime in 2003, Stanford performed a "blood oath" brotherhood ceremony with King and another employee of the FSRC, each of whom participated in the FSRC's regulatory oversight of SIBL. This brotherhood oath was undertaken in order to extract an agreement from both King and the other FSRC employee that they, in exchange for regular cash bribe payments by Stanford to King and the other FSRC employee, would ensure that the Antiguan bank regulators would not "kill the business" of SIBL. During the course of the fraud scheme King routinely referred to Stanford as "Brother" or "Big Brother." In the regular preparation of the false SIBL investment reports for submission to the FSRC, Stanford, **DAVIS**, and other conspirators relied upon the assurances that King and the other FSRC employee, because of the bribes, would ensure that the FSRC would not actually examine the validity of the investments of SIBL as set forth in those investment reports.

(q) When Stanford needed cash to make these bribe payments, he generally would instruct **DAVIS** to debit funds from a secret numbered Swiss bank account at Society General Bank (SocGen account #108731) and to wire those funds to an SFG account at Bank of Antigua, from which the cash in United States dollars would be withdrawn. This secret SocGen account #108731was funded by CD investor funds and was also used to make regular bribe payments, via wire transfer, to SIBL's outside auditor in Antigua, C.A.S. Hewlett & Co. Ltd. The cash bribe payments by Stanford to King ultimately exceeded $200,000.

(r) Sometime in approximately 2003, Stanford and SIBL Executive A complained to King that two FSRC examiners were becoming aggressive and suspicious in their examination of SIBL's financial statements. Stanford reassured **DAVIS** and SIBL Executive A that, because of their brotherhood oath and the bribe payments, King would assist in removing the two FSRC employees from the regulatory oversight function of SIBL. Both FSRC employees soon thereafter were reassigned or replaced.

(s) In January 2004, Stanford also continued his bribery scheme with Leroy King by paying $8000 for tickets to the Super Bowl game in Houston and by corruptly giving those tickets to King and his girlfriend to attend the game.

(t) In June of 2005, King provided to Stanford a confidential letter that King had received from the United States Securities and Exchange Commission (SEC) in his capacity as Administrator and CEO of the FSRC wherein the SEC sought information and

records regarding SIBL's CD investment portfolio. In the confidential letter, the SEC maintained that it was investigating SIBL's sales practices with respect to its CD program and sought from the FSRC details and records of SIBL's investments because the SEC stated that it had evidence to suggest that SIBL was engaged in a "possible Ponzi scheme." Stanford and SIBL Executive A then assisted King in drafting a false and misleading response by the FSRC to this confidential SEC letter.

(u) By August of 2005, Stanford had retained an outside counsel to represent the interests of SIBL in the SEC inquiry of SIBL's sales practices (hereafter Outside Attorney A). During that month, Outside Attorney A traveled to the SIBL facility in Antigua where he met with Stanford, **DAVIS**, SIBL Executive A, Leroy King and others to familiarize himself with the operations and finances of SIBL. Outside Attorney A further reviewed SIBL's disclosures to investors in its CD program.

(v) On July 30, 2006, Leroy King transmitted to SFG Attorney A in Houston, Texas, a letter dated July 11, 2006 from the Director of the Bank Supervision Department at the Eastern Caribbean Central Bank ("ECCB") to the FSRC in Antigua concerning, inter alia, the affiliate relationship of SIBL to the Bank of Antigua. Similarly, on August 1, 2006, King again faxed to SFG Attorney A in Houston, Texas, a proposed response to the ECCB letter which sought the input of SFG Attorney A in crafting a response by the FSRC calculated to mislead the ECCB as to the financial bona fides of SIBL to prevent legitimate scrutiny of SIBL by the Eastern Carribean bank regulator. Recognizing that he had already been paid through cash bribe

payments from Stanford, King concluded the August 1, 2006 facsimile transmission with the following handwritten words: "Please do not bill me (laugh), Thanks a million, Lee."

(w) On September 25, 2006, King provided to Stanford, SFG Attorney A, and SIBL Executive A another confidential letter he had received from the SEC wherein the SEC again sought records and information regarding SIBL's CD investment portfolio. Stanford, **DAVIS**, SIBL Executive A, and SFG Attorney A would then propose various responses designed to mislead the SEC that King would be requested to insert into the FSRC's response to the SEC's confidential letter.

(x) In late September of 2006, Outside Attorney A contacted the SEC and represented that he had "heard through the grapevine" that the FSRC had not been provided with an appropriate request from the SEC for documents; that the SEC should "go to Antigua" to review the SIBL examination reports; that the SEC had "no basis" to request documents regarding SIBL's investment portfolio from SIBL; that he (Outside Attorney A) had spent 15 years investigating fraud for the SEC and was "well-equipped" to recognize the "hallmarks of fraud"; that he (Outside Attorney A) found SIBL to be credible in all their business dealings; and that, based upon his review of the situation and personal visit to SIBL, Outside Attorney A found SIBL to be an "incredible institution."

(y) In late 2008, Outside Attorney A was informed that SIBL's CD investment portfolio included a previously undisclosed third tier of investments (Tier III) that was not "managed" by

Holt. Subsequently, in early January 2009, Outside Attorney A was informed that this third tier included real estate investments and private equity. Outside Attorney A, through his prior review of SIBL's disclosures knew and understood that this third tier of investments, including the real estate investments, had not been disclosed to investors. In early January of 2009 Outside Attorney A further learned that this undisclosed third tier of investments constituted approximately 80% of SIBL's investment portfolio or approximately $6 billion.

(z) During the course of the fraud conspiracy, Holt supervised a group of research analysts at SFG's offices in Memphis, Tennessee, who were primarily responsible for researching and trading investments in the Tier II segment of SIBL's portfolio. These research analysts were aware that Tier II represented a small segment of SIBL's entire portfolio and that the vast majority of SIBL's purported assets were in Tier III of SIBL's portfolio. Occasionally, Holt's research analysts would question her regarding Holt's knowledge of SIBL's Tier III assets. Holt would often dismiss such inquiries and would explain that she knew the details of the assets in Tier III and the research analysts "did not need to concern themselves" with Tier III.

(aa) From 2005 through at least February of 2009, Stanford, **DAVIS**, Holt, SIBL Executive A and others would attend investor conferences and other meetings with FAs called "Top Producer Club" or "TPC" meetings where they would falsely tout the assets and earnings of SIBL's investments, falsely tout SIBL's investment strategy and deceive both

the investors and FAs as to the role Holt played in the "management" of SIBL's investment portfolio.

(bb) In December 2008, Holt's research analysts began to make further inquiry of Holt regarding the quantity and the quality of the assets that made up SIBL' s Tier III. During that same month, Holt led several meetings with her research analysts wherein she would purport to inform the analysts as to some of the content of SIBL's Tier III. Specifically, Holt explained the evolution of Tier III from a segment of SIBL's portfolio in the 1990s that contained mostly futures, options and currencies, to its current content which was purportedly geared toward larger holdings of real estate and private equity. Holt explained that Tier III was composed of 30-40% private equity and real estate and 10-12% cash. She further explained that SIBL had conducted private equity and real estate deals that had been "very profitable." In fact, she cited one transaction involving "two islands and one club" that Stanford had acquired and "got a very good deal." Because of this, Holt explained, Tier III was "up 7% mid-year." Holt told her research analysts that "we are restructuring Tier III and that will happen as early as January 2009."

(cc) In mid-2008, Stanford, **DAVIS** and other conspirators were desperately seeking a fraudulent mechanism whereby they could artificially inflate SIBL's assets and thereby further conceal the fact that, undisclosed to investors, Stanford had made approximately $2 billion in loans to himself; that many if not all of private equity investments in Tier III were either insolvent or losing money badly, and that the touted returns on investment had been fictitious. As such, Stanford, **DAVIS**, Lopez, Kuhrt

and other conspirators designed a real estate transaction wherein they would falsely inflate and convert an approximate $65 million dollar real estate transaction in Antigua into a purported $3.2 billion dollar asset of SIBL merely through a series of related party property flips through business entities controlled by Stanford. From approximately May 2008 through November 2008, Stanford, **DAVIS**, Lopez, Kuhrt,SIBL Executive A, SFG Attorney A and other conspirators participated in documenting elements of this bogus real estate in the books and records of SIBL designed to fraudulently add billions of dollars in value to SIBL's financial statements.

(dd) On January 14, 2009, the SEC served, through Outside Attorney A, investigatory subpoenas to **DAVIS** and Holt seeking testimony and documents related to SIBL's investment portfolio. Stanford also was served an SEC subpoena through Outside Attorney A. Outside Attorney A understood that the SEC inquiry would require the subpoenaed individuals to make a complete and transparent presentation to the SEC regarding all of the assets related to SIBL's CD program.

(ee) On January 21, 2009, Outside Attorney A met at the SIBL airplane hangar in Miami, Florida, to discuss the SEC investigation with Stanford, **DAVIS**, Holt, SIBL Executive A, SFG Attorney A and others to discuss who could make the presentation to the SEC. At that meeting, despite the knowledge that Stanford and **DAVIS** were in the best position to disclose the assets in the Tier III portfolio, Stanford, **DAVIS**, Holt, Outside Attorney A, SIBL Executive A and SFG Attorney A all agreed that Outside Attorney A would seek to convince the

SEC that Holt and SIBL Executive A were the best individuals to present testimony and evidence to the SEC as to SIBL's entire investment portfolio. The participants also agreed to participate in a series of meetings in Miami, Florida during the week of February 2, 2009, to bring Holt and SIBL Executive A "up to speed on Tier 3" before the SEC presentation.

(ff) On January 22, 2008, Outside Attorney A met in Houston, Texas with several SEC attorneys in Houston, Texas to discuss issues related to the SEC investigation. The SEC attorneys reiterated that their investigation was seeking to determine where and how the entire portfolio of SIBL assets were invested and managed. Outside Attorney A falsely maintained that Stanford and **DAVIS** did not "micro-manage" the portfolio but that Holt and SIBL Executive A were the "better people to explain the details" about SIBL's entire portfolio. As a result of Outside Attorney A's misleading statements, the SEC attorneys agreed to postpone the testimony of Stanford and **DAVIS** and to take the testimony of SIBL Executive A and Holt on February 9-10, 2009, respectively. Outside Attorney A also falsely informed the SEC attorneys at this meeting that SIBL was "not a criminal enterprise."

(gg) In the last week of January 2009, **DAVIS** met with King in Antigua. By that time, SIBL was facing increasing regulatory scrutiny from the SEC, and Stanford, Holt and **DAVIS**, had received subpoenas from the SEC. King appeared very stressed. King related that he had again been contacted by the SEC. King asked **DAVIS** if "we were going to make it?" which meant whether the fraud they had been engaged in was going to be

exposed. **DAVIS** informed King that he thought they were going to be ok.

(hh) On January 27, 2009, Outside Attorney A contacted **DAVIS**, Holt and SIBL Executive A and informed them when Holt and SIBL Executive A responded to the SEC inquiry they would be required to present "positive proof' regarding all of the assets of SIBL including the three tiers, that they needed to "rise to the occasion," and that "our livelihood depends on it."

(ii) On February 3, 4, 5 and 6, 2009, **DAVIS** met with Holt, SFG Attorney A, SIBL Executive A, Outside Attorney A, and ultimately, Stanford on February 5, and others, at SFG' s office in Miami, Florida to discuss the testimony that Holt and SIBL Executive A would provide to the SEC during the week of February 9, 2009. During these meetings Holt disclosed that the value of the assets she actually managed in Tier II totaled approximately $350 million, down from $850 million in June of 2008. At these meetings **DAVIS** further revealed that the purported value of Tier III of SIBL's investment portfolio was made up of: real estate valued at in excess of $3 billion which allegedly had been acquired earlier that year by SIBL for less than $90 million; $1.6 billion in "loans" to Stanford; and various other private equity investments. Several of the Miami meeting participants acknowledged that if this disclosure was accurate, then the bank was insolvent. During the February 5, 2009 session, Stanford falsely informed the participants that despite what they had just been told, SIBL had "at least $850 million more in assets than liabilities."

(jj) Later in the day of February 5, 2009, Stanford, **DAVIS** and Outside Attorney A attended a separate meeting where Stanford acknowledged that SIBL's assets and financial health had been misrepresented to investors, and were overstated in SIBL's financials.

(kk) On the morning of February 10, 2009, prior to Holt's testimony before the SEC in Fort Worth, Texas, in an effort to continue to obstruct the SEC investigation, **DAVIS** spoke with Holt by telephone and told her to only disclose to SEC investigators her knowledge of Tier II investments.

(ll) During her testimony to the SEC on February 10, 2009, in addition to failing to disclose the Miami meetings and participants which had occurred the prior week, Holt falsely stated in her SEC testimony that she was unaware of the assets and allocations of assets in Tier III of SIBL's portfolio.

Breach of Plea Agreement

18. If the defendant fails in any way to fulfill completely all of his obligations under this Agreement, the United States will be released from its obligations hereunder, and the defendant's plea and sentence will stand. If at any time the defendant retains, conceals, or disposes of assets in violation of this Agreement, or if the defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may ask the Court to set aside his guilty plea and reinstate prosecution. Any information and documents that have been disclosed by the defendant, whether prior to or subsequent to execution of this Agreement, and all leads derived

therefrom, will be used against the defendant in any prosecution.

Forfeiture

19. Defendant agrees to forfeit all property which constitutes or is derived from proceeds traceable to the violations charged in Counts One and Two of the information. Defendant stipulates and agrees that the factual basis for his guilty plea supports the forfeiture of at least $1,000,000,000 (one billion dollars). Defendant agrees to a personal money judgment for $1,000,000,000 (one billion dollars) against him and in favor of the United States of America. Defendant represents that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant stipulates and admits that one or more of the conditions set forth in 21 U.S.C. § 853(p) exists. Defendant agrees to forfeit any of Defendant's property, or Defendant's interest in any property, up to the value of any unpaid portion of the money judgment, until the money judgment is fully satisfied. Defendant agrees to take all steps necessary to pass clear title to forfeitable and substitute assets to the United States, including but not limited to surrendering title, signing a consent decree, stipulating facts regarding the transfer of title and basis for the forfeiture, and signing any other documents necessary to effectuate such transfer.

20. Defendant agrees to the entry of a preliminary order of forfeiture and consents to the preliminary order of forfeiture becoming final as to the Defendant immediately following this guilty plea

pursuant to Fed.R.Crim.P. 32.2(b)(3). Defendant waives the right to challenge the forfeiture of property in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

21. This Agreement, consisting of 23 pages, together with the attached letter agreement dated April 21, 2009, constitutes the complete plea agreement between the United States, the defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Agreement. The defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

22. Any modification of this Agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on August 27, 2009.

/s/ James M. Davis
James M. Davis
Defendant

Subscribed and sworn to before me on August 27, 2009.

By: /s/
Deputy United States District Clerk

APPROVED:

Tim Johnson
United States Attorney

/s/ David Finn
David Finn
Attorney for Defendant

By: /s/ Gregg Costa
Gregg Costa
Assistant US Attorney

Steven A. Tyrrell
Chief
Fraud Section, Criminal Division
Department of Justice

By: /s/ Paul E. Pellier
Paul E. Pellier
Principal Deputy Chief
Jack B. Patrick
Senior Litigation Counsel
Matthew Klecka
Trial Attorney

U.S. Department of Justice

1400 New York Avenue
Washington, DC 20530
(202) 353-7693

April 21, 2009

VIA FEDEX AND EMAIL

David Finn, Esq.
Milner & Finn
2828 North Harwood Street
Suite 1950, Lock Box 9
Dallas, TX 75201

Re: Davis Plea Agreement

Dear Mr. Finn:

This letter sets forth the terms of the plea agreement between your client, James Davis, and the United States, by and through the Fraud Section of the Criminal Division of the Department of Justice and the United States Attorney's Office for the Southern District of Texas (hereinafter referred to as the "United States"), regarding your client's involvement with Stanford Group, Inc., Stanford International Bank, Ltd., and related entities including the predecessor bank, Guardian Trust, from at least 1989 through the present. The terms of this "Agreement" are as follows:

1. Davis agrees to waive prosecution by indictment and to plead guilty to three counts of a Criminal Information, charging Davis: in Count 1 with conspiracy to violate the following laws:

Securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5; wire fraud, in violation of Title 18, United States Code, Section 1343; mail fraud, in violation of Title 18, United States Code, Section 1341; and obstruction of a proceeding before the Securities and Exchange Commission, in violation of Title 18, United States Code, Section 1505; all in violation of Title 18, United States Code, Section 371; in Count 2 with mail fraud, in violation of Title 18, United States Code, Sections 1341 and 2; and in Count 3 with obstruction of a proceeding before the Securities and Exchange Commission, in violation of Title 18, United States Code, Sections 1505 and 2. The Criminal Information also includes a forfeiture allegation, as further discussed herein.

2. Davis is aware that his sentence will be imposed by the Court. Davis understands and agrees that federal sentencing law requires the Court to impose a sentence that is reasonable and that the Court must consider the United States Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines") in effect at the time of the sentencing in determining that reasonable sentence. Davis acknowledges and understands that the Court will compute an advisory sentence under the United States Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's Probation Department, which investigation will commence after the guilty plea has been entered. Davis is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline

range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. Davis is further aware and understands that while the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, it is not bound to impose a sentence within that range. Davis understands that the facts that determine the offense level will be found by the Court at the time of sentencing and that in making those determinations the Court may consider any reliable evidence, including hearsay, as well as the provisions or stipulations in this Agreement. The United States and Davis agree to recommend that the Sentencing Guidelines should apply and that pursuant to United States v. Booker, the Guidelines provide a fair and just resolution based on the facts of this case, and that no downward departures or variances are appropriate other than the reduction for acceptance of responsibility noted in paragraph 12 and the potential for a reduction under the terms set forth in paragraph 9. The Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, Davis understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offenses identified in paragraph 1 and that Davis may not withdraw the plea solely as a result of the sentence imposed.

3. Davis also understands and acknowledges that as to Count 1, the Court may impose a statutory maximum term of imprisonment of up to five (5)

years. Davis understands and acknowledges that as to Count 2, the Court may impose a statutory maximum term of imprisonment of up to twenty (20) years. Davis understands and acknowledges that as to Count 3, the Court may impose a statutory maximum term of imprisonment of up to five (5) years. In addition to any period of imprisonment as reflected above, the Court may also impose a period of supervised release of up to three (3) years to commence at the conclusion of the period of imprisonment. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to the greater of $250,000, or twice the gross pecuniary gain or loss pursuant to 18 U.S.C. § 3571(d).

4. Davis further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this Agreement, a special assessment in the total amount of $300 will be imposed on Davis. Davis agrees that any special assessment imposed shall be paid immediately after sentencing.

5. Davis further understands and acknowledges that he (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which the United States inquires of him, which information can be used for any purpose; (b) shall cooperate fully with the United States and any other law enforcement agency designated by the United States; (c) shall attend all meetings at which the United States requests his presence; (d) shall provide to the United States, upon request, any document, record, or other tangible evidence relating to matters about which the United States or any designated law enforcement agency inquires of him;

(e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which the United States may request his testimony; (f) shall bring to the attention of the United States all crimes which he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance Davis may provide to federal criminal investigators shall be pursuant to the specific instructions and control of the United States and designated investigators. In carrying out his obligations under this paragraph, Davis shall neither minimize his own involvement nor fabricate, minimize or exaggerate the involvement of others.

6. Davis shall provide, when requested, the Probation Department and counsel for the United States with a full, complete and accurate personal financial statement listing all assets under his direct or indirect control, including any assets he may have transferred or placed in the control of others within the 10 year period prior to execution of this Agreement. If Davis provides incomplete or untruthful statements in his personal financial statement, his action shall be deemed a material breach of this Agreement and the United States shall be free to pursue all appropriate charges against him notwithstanding any agreements to forbear from bringing additional charges otherwise set forth in this Agreement.

7. Provided that Davis commits no new criminal offenses and provided he continues to demonstrate an affirmative recognition and affirmative acceptance of personal responsibility for his criminal

conduct, the United States agrees that it will recommend at sentencing that Davis receive a three-level reduction for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines, based upon Davis' recognition and affirmative and timely acceptance of personal responsibility. The United States, however, will not be required to make this sentencing recommendation if Davis: (1) fails or refuses to timely enter his guilty plea and to make a full, accurate and complete disclosure to the United States and the Probation Department of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) is found to have misrepresented facts to the United States prior to entering this Agreement; or (3) commits any misconduct after entering into this Agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

8. The United States reserves the right to inform the Court and the Probation Department of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning Davis and Davis' background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this Agreement, the United States further reserves the right to make any recommendation as to the quality and quantity of punishment.

9. The United States reserves the right to evaluate the nature and extent of Davis' cooperation and to make Davis' cooperation, or lack thereof,

known to the Court at the time of sentencing. If, in the sole and unreviewable judgment of the United States, Davis' cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the sentence required by the Sentencing Guidelines, the United States may, at or before sentencing make, a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or subsequent to sentencing by motion pursuant to Rule 35 of the Federal Rules of Criminal Procedure, reflecting that Davis has provided substantial assistance and recommending a sentence reduction. Davis acknowledges and agrees, however, that nothing in this Agreement may be construed to require the United States to file such a motion and that the United States' assessment of the nature, value, truthfulness, completeness, and accuracy of Davis' cooperation shall be binding on Davis.

10. Davis understands and acknowledges that the Court is under no obligation to grant a motion by the United States pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in paragraph 9 of this Agreement, should the United States exercise its discretion to file such a motion.

11. Davis admits and acknowledges that the following facts are true and that the United States could prove them at trial beyond a reasonable doubt:

(a) That Davis' participation in the conspiracy and scheme and artifice resulted in a loss of more than $400,000,000;

(b) That Davis' offense involved more than two-hundred fifty (250) victims;

(c) That a substantial part of Davis' fraudulent scheme was committed from outside the United States and otherwise involved sophisticated means;

(d) That Davis' offense affected the safety and soundness of a financial institution and endangered the solvency or financial security of 100 or more victims; and

(e) That Davis abused a position of trust as Chief Financial Officer of Stanford Group, Inc., and Stanford International Bank, Ltd.

12. Based on the foregoing, the United States and Davis agree that although not binding on the Probation Department or the Court, the applicable Sentencing Guidelines adjusted offense level is as follows:

a. Section 2B1.1(a) - Base offense level for wire fraud offense	7
b. Section 2B1.1(b)(1)(K) - Loss of more than $400,000,000	30
c. Section 2B1.1(b)(2)(B) - More than 250 victims	6
d. Section 2B1.1(b)(9)(C) & (D)- Substantial part of scheme committed outside the United States and otherwise used sophisticated means	2
e. Section 2B1.1(b)(14)(B) - Affecting safety and soundness of a financial institution and endangering the solvency or	4

	financial security of 100 or more victims	
f.	Section 3B1.3 Abuse of position of trust	2
g.	Section 2B1.1(b)(14)(C) - Combination of enhancement for more than 250 victims (+6) and enhancement for safety and soundness of a financial institution and endangering the solvency or financial security of 100 or more victims (+4) equals 10, therefore reduced to 8	-2
h.	Sections 3E1.1(a) and 3E1.1(b) Acceptance of Responsibility (if applicable)	-3
	TOTAL OFFENSE LEVEL - ADJUSTED	46

13. Davis agrees to forfeiture of all property, real or personal, which constitutes or is derived from proceeds traceable to the violations of 18 U.S.C. § 371 (conspiracy to commit wire and mail fraud) and 18 U.S.C. § 1343 (wire fraud). Davis agrees that all such property is subject to criminal forfeiture pursuant to 28 U.S.C. § 2461(c) (incorporating 18 U.S.C. § 981(a)(1)(C)), as property constituting, or derived from, proceeds obtained, directly or indirectly, as the result of the conspiracy (Count 1) and mail fraud scheme (Count 2). In order to effectuate the forfeiture, Davis agrees to the entry of a Consent Order of Forfeiture, in the form of a money judgmen', of $1,000,000,000.00 (one billion dollars). Davis acknowledges that the money judgment is subject to forfeiture as proceeds of

illegal conduct or substitute assets for property otherwise subject to forfeiture.

14. Davis also agrees that he shall assist the United States in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in the assets which Davis has agreed to forfeit, and any other assets, including real and personal property, cash and other monetary instruments, wherever located, which Davis or others to his knowledge have accumulated as a result of illegal activities. Such assistance shall include Davis' consent to the entry of any order deemed by the United States as necessary to effectuate said forfeitures. In addition, Davis agrees to identify as being subject to forfeiture and/or restitution all such assets, and to assist in the transfer of such property to the United States by delivering to the United States upon the United States' request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property. To the extent the assets are no longer within the possession and control or name of Davis, Davis agrees that the United States may seek substitute assets within the meaning of 21 U.S.C. § 853. Davis further agrees to assist the United States in recovering all victim assets, wherever located, including but not limited to, executing requests for repatriation of said assets, wherever located, and facilitating the entry of court orders or treaty requests regarding said assets, wherever located. Davis further agrees not to alienate, transfer or encumber any asset over which

he has direct or indirect control unless otherwise agreed to by the United States or permitted by order of the Court. Failure to comply with the terms of this paragraph will constitute a material breach of this agreement.

15. Davis knowingly and voluntarily agrees to waive any claim or defenses he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited assets or victim restitution. Davis further knowingly and voluntarily waives his right to a jury trial on the forfeiture of said assets, waives any statute of limitations with respect to the forfeiture of said assets, and waives any notice of forfeiture proceedings, whether administrative or judicial, against the forfeited assets. Davis waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Davis acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

16. Davis acknowledges that because the offenses of conviction occurred after April 24, 1996, restitution is mandatory without regard to the Davis' ability to pay and that the Court must order Davis to pay restitution for the full loss caused by his criminal conduct pursuant to Title 18, United States Code, Section 3663A, provided, however, that the United States agrees that the value of any property

returned to victims through the forfeiture and remission process shall be credited against any order of restitution due to victims.

17. Davis is aware that the sentence has not yet been determined by the Court. Davis is also aware that any estimate of the probable sentencing range or sentence that Davis may receive, whether that estimate comes from Davis' attorney, the United States, or the Probation Department, is a prediction, not a promise, and is not binding on the United States, the Probation Department or the Court. Davis further understands that any recommendation that the United States makes to the Court as to sentencing, whether pursuant to this Agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. Davis understands and acknowledges, as previously acknowledged in paragraph 2 above, that Davis may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by Davis, the United States, or a recommendation made jointly by both Davis and the United States.

18. Davis is aware that Title 18, United States Code, Section 3742 affords Davis the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this Agreement, Davis hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any forfeiture or restitution ordered, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute. Davis further understands that nothing in this Agreement shall affect the right of the United States and/or its

duty to appeal as set forth in Title 18, United States Code, Section 3742(b). If the United States appeals Davis' sentence pursuant to Section 3742(b), however, Davis shall be released from this waiver of appellate rights. By executing this Agreement, Davis acknowledges that he has discussed the appeal waiver set forth in this Agreement with his attorney. Davis further agrees, together with the United States, to request that the district Court enter a specific finding that the Davis' waiver of his right to appeal the sentence to be imposed in this case was knowing and voluntary.

19. Davis acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

20. For purposes of criminal prosecution, this Agreement shall be binding and enforceable upon the Fraud Section of the Criminal Division of the United States Department of Justice and the United States Attorney's Office for the Southern District of Texas. The United States does not release Davis from any claims under Title 26, United States Code. Further, this Agreement in no way limits, binds, or otherwise affects the rights, powers or duties of any

state or local law enforcement agency or any administrative or regulatory authority.

21. In the event that Davis does not plead guilty or if Davis breaches this Agreement by failing to comply with any terms hereto, Davis agrees and understands that he thereby waives any protection afforded by Section 1B 1.8(a) of the Sentencing Guidelines and Rule 11(f) of the Federal Rules of Criminal Procedure, and that any statements made by him as part of his cooperation with the United States, or otherwise, both prior or subsequent to signing this Agreement, will be admissible against him without any limitation in any civil or criminal proceeding and Davis shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. By entering into this Agreement, Davis intends to waive all rights in the foregoing respects.

22. This Agreement is the entire agreement and understanding between the United States and Davis. There are no other agreements, promises, representations or understandings.

Respectfully submitted,

STEVEN A. TYRRELL, CHIEF
U.S. DEPARTMENT OF JUSTICE
CRIMINAL DIVISION FRAUD
SECTION

By: /s/ Paul E. Pelletier
PAUL E. PELLETIER,

Principal Deputy Chief
U.S. Department of Justice
Criminal Division, Fraud Section

TIMOTHY JOHNSON
ACTING UNITED STATES
ATTORNEY

By: /s/ Gregg Costa
GREGG COSTA
ASSISTANT UNITED STATES
ATTORNEY

/s/ James Davis
JAMES DAVIS, DEFENDANT
Date:

/s/ David Finn
DAVID FINN
COUNSEL FOR JAMES DAVIS
Date:

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	**UNSEALED PER ORDER 6/19/09**
v.	§	
ROBERT ALLEN STANFORD a/k/a Sir Allen Stanford a/k/a Allen Stanford,	§	**FILED JUN 18, 2009 Michael N. Milby, Clerk**
LAURA PENDERGEST-HOLT a/k/a Laura Pendergest a/k/a Laura Holt,	§	**CR. No. H-09-342**
	§	**UNDER SEAL**
GILBERTO LOPEZ,	§	
MARK KUHRT and	§	
LEROY KING,	§	
Defendants.	§	

INDICTMENT

The Grand Jury Charges:

At all times material to this Indictment, unless otherwise specified:

COUNT ONE
Conspiracy to Commit Mail, Wire and Securities Fraud
(Violation of 18 U.S.C. § 371)

RELEVANT PERSONS AND ENTITIES

1. Stanford Financial Group (SFG) was the parent company of Stanford International Bank, Ltd. and a web of other affiliated financial services entities, including Stanford Group Company. SFG maintained offices in several locations, including Houston, Texas, Memphis, Tennessee, and Miami, Florida.

2. Stanford International Bank, Ltd. (SIBL) was a private, offshore bank with offices on the island of Antigua and elsewhere. SIBL was organized in or about 1985 in Montserrat, originally under the name of Guardian International Bank. In or about 1989, SIBL's principal banking location was moved to Antigua.

3. SIBL's primary investment product was marketed as a "Certificate of Deposit" (CD). SIBL marketed CDs to investors promising substantially higher rates of return than were generally offered at banks in the United States from 2001 to 2008. In its 2007 Annual Report to investors, SIBL purported to have approximately $6.7 billion worth of the CD deposits and over $7 billion in total assets. In its December 2008 Monthly Report, SIBL purported to have over 30,000 clients from 131 countries representing $8.5 billion in assets.

4. Stanford Group Company (SGC), a Houston-based company, was founded in or about 1995. SGC was registered with the Securities and Exchange Commission (SEC) as a broker-dealer and

investment advisor. SGC was also a member of the Financial Industry Regulatory Agency, formerly the National Association of Securities Dealers, and the U.S. Securities Investor Protection Insurance Corporation (SIPIC). Although SGC and the financial advisers employed by SGC promoted the sale of SIBL's CDs through SGC's 25 offices located throughout the United States, SIBL's CDs were not insured by SIPIC or the Federal Deposit Insurance Corporation (FDIC).

5. In Antigua, SIBL was purportedly regulated by the Financial Services Regulatory Commission (FSRC), an agency of the Antiguan government, and was subject to annual on-site inspection by the FSRC. The FSRC claimed on its website that it conducted these inspections to determine the solvency of the banks, review the quality of the investments, and review the accuracy of the banks' returns. Annually, SIBL provided to the FSRC an "Analysis of Investments" report which listed purported values for SIBL's investments. FSRC did not, however, audit SIBL's financial statements or verify the value SIBL ascribed to its investments in the Analysis of Investments.

6. Defendant **ROBERT ALLEN STANFORD** controlled SFG and its affiliated companies, including, through a holding company, SIBL. **STANFORD** was the chairman of the SIBL Board of Directors and a member of SIBL's Investment Committee. **STANFORD,** among other things, received regular updates and financial reports on the investment activities of SIBL; made hiring decisions for SIBL; made decisions about what revenue and asset numbers to report to investors and others; made investment decisions for SIBL; updated

investors and others about the activities and financial status of SIBL; and approved reports to investors and others about the financial condition of SIBL. **STANFORD** also authorized SIBL to make loans to himself and authorized SIBL to purchase property from **STANFORD**-controlled entities and to sell property to **STANFORD**-controlled entities.

7. JAMES M. DAVIS, a co-conspirator not named as a defendant herein, was the Chief Financial Officer (CFO) for SFG and SIBL, and served as a member of SIBL's Investment Committee. DAVIS, among other things, regularly consulted with **STANFORD** about the financial status of SIBL, including investment decisions; received regular updates on SIBL's revenue and loss records; made decisions, based on the direction of **STANFORD,** about what revenue and asset numbers to report to investors and others; updated investors and others about the financial status and operations of SIBL; and approved reports to investors and others about the financial condition of SIBL.

8. Defendant **LAURA PENDERGEST-HOLT** was the Chief Investment Officer (CIO) of SFG. In or about December 2005, **HOLT** was appointed by the SIBL Board of Directors as a member of SIBL's Investment Committee. **PENDERGEST-HOLT,** among other things, held herself out to investors, employees of SIBL and SFG, and others as managing the entire investment portfolio of SIBL; updated investors and employees of SIBL and SFG regarding the financial status of SIBL; provided information about SIBL's investment portfolio to SFG and SGC financial brokers; and supervised SFG research analysts.

9. Defendant **GILBERTO LOPEZ** was the Chief Accounting Officer of SFG. **LOPEZ,** among other things, was responsible for tracking SIBL revenues, assets and liabilities, and was responsible for the preparation of the revenue and asset numbers used in SIBL's financial reports.

10. Defendant **MARK KUHRT** was the Global Controller for Stanford Financial Group Global Management, an affiliate of SFG and SIBL. **KUHRT,** among other things, maintained calculations of investment revenue of SIBL and, along with **LOPEZ,** was responsible for the preparation of the revenue and asset numbers used in SIBL's financial reports.

11. Defendant **LEROY KING** was the Administrator and Chief Executive Officer for the FSRC. **KING,** among other things, was responsible for Antigua's regulatory oversight of SIBL's investment portfolio, including the review of SIBL financial reports for the Antiguan Government, and the response to requests by foreign regulators, including the SEC, for information and documents about SIBL's operations.

BACKGROUND

SIBL's Investment "Program"

12. **STANFORD, HOLT, LOPEZ, KUHRT,** DAVIS, and others managed, marketed and monitored SIBL's CD investment program. The defendants and their conspirators caused investors and potential investors in SIBL CDs to receive a Disclosure Statement, amended several times over the years, and other documents providing information regarding SIBL, including data purportedly depicting SIBL's historical investment

portfolio performance by specific categories of investment and updating SIBL investors on the financial condition of SIBL.

13. In promoting the SIBL CDs to investors, **STANFORD, HOLT** and DAVIS represented and caused others to represent: (a) the safety and security of SIBL's investments and CDs; (b) consistent double-digit returns on the bank's investment portfolio; and (c) high return rates on the SIBL CDs that greatly exceeded those offered by commercial banks in the United States.

14. **STANFORD, HOLT, LOPEZ, KUHRT,** DAVIS, and others caused to be sent to investors Annual Reports purportedly representing SIBL's earnings from its "diversified investments." For example, the Annual Reports listed investment earnings of approximately $479 million in 2006, and approximately $642 million in 2007.

15. Commencing in or about 2000, **STANFORD** sought to increase sales of SIBL CDs in the United States. To do so, SGC recruited investment advisors, along with their clients, from other brokerage firms. Financial advisors at SGC would receive a 1% commission based upon the value of CDs they sold, and were eligible to receive additional commissions for CD sales. **STANFORD, HOLT** and DAVIS provided and caused to be provided information to these financial advisors about the financial condition of SIBL and the SIBL CDs.

16. SIBL investors and potential investors were *not* advised of the actual investments made by SIBL and could not determine the nature and risk of investments. Unknown to investors, the defendants and their conspirators internally segregated SIBL's

investment portfolio into three investment tiers: (a) cash and cash equivalents ("Tier I"); (b) investments with "outside portfolio managers" ("Tier II"); and (c) other assets ("Tier III").

17. According to internal SIBL documents, as of June 30, 2008: Tier I investments represented only about 9% of the purported total value of SIBL's investments; Tier II investments represented only about 10% of the purported total value of SIBL's investments; and Tier III investments represented more than 80% of the purported total value of SIBL's investments.

18. SIBL's Treasurer ("the SIBL Treasurer") had primary responsibility for the Tier I cash and cash equivalent investments.

19. Unknown to investors, SGC financial advisors and others, **HOLT** "monitored" only Tier II investments, which were actually managed by well-known investment entities outside of SIBL that had complete discretion over the Tier II investments. SIBL would provide funds for investments to these "outside portfolio managers," also referred to as "money managers," and the money managers would select how funds would be invested for Tier II, that is, what investments would be made, limited by the funds available to them.

20. **STANFORD** and DAVIS directed, managed, and monitored the remaining investments — the Tier III investments. According to internal SIBL documents, as of June 30, 2008, these Tier III investments comprised the majority of the purported value of SIBL's investment portfolio. Approximately 50% of the purported value of Tier III (approximately $3.2 billion) included investments in

artificially valued real estate and approximately 30% of the purported value of Tier III (approximately $1.6 billion) included notes on personal loans to **STANFORD**. **STANFORD,** DAVIS and others did not disclose to, and actively concealed from, investors, SGC and SIBL employees, and others the fact that approximately $4.8 billion in purported Tier III investments consisted of such artificially valued real estate and notes on personal loans to **STANFORD**.

21. In its Monthly Report to investors for December 2008, SIBL reported total assets of over $8 billion, and an approximate 1.3% decline in earnings for the year, which the Monthly Report contrasted with the performance of other financial indices reporting approximately 30% to 40% declines. As set forth above, it was not disclosed in the Report that approximately $4.8 billion of the purported $8 billion "value" of these "total assets" was in notes on additional loans to **STANFORD** and in interests in certain "island properties," the values of which had been grossly overstated.

Marketing of SIBL CDs

22. **STANFORD, HOLT,** DAVIS, and others routinely made presentations to financial advisors employed by SGC regarding the financial condition of SIBL and its investment portfolio. The SGC financial advisors, in turn, provided information to prospective investors regarding the CD investment program.

23. **STANFORD, HOLT,** and DAVIS, at times, made presentations directly to individuals or groups of prospective investors regarding SIBL's CD program and to existing investors who were

considering additional CD purchases or redemptions of their CDs.

24. **STANFORD** regularly sponsored "Top Producers Club" (TPC) meetings, which were held at various locations, including January 2009 meetings in Phoenix and Miami, and were attended by financial advisors and others. At these TPC meetings, **STANFORD, HOLT,** DAVIS and others touted the purported economic condition and viability of SIBL to instill confidence in the CD investment program and encourage the financial advisors to aggressively market and sell SIBL's CDs.

25. **STANFORD, HOLT,** DAVIS and others, on behalf of SIBL, reviewed and caused the issuance of SIBL's periodic Annual, Quarterly and Monthly Reports, which were provided to investors and used by SGC's financial advisors in marketing SIBL's CDs. In marketing the CDs as safe and secure investments, the financial advisors and SIBL's brochures, reports and other documents variously emphasized that SIBL was "strong, safe and fiscally sound" and that its investment strategy was a "conservative approach" and "long term, hands on and globally diversified with strong liquidity and minimal leverage."

SEC Investigation

26. In or about 2005, the Securities and Exchange Commission (SEC) initiated an investigation of SFG and began making official inquiries with the FSRC regarding the value and content of SIBL's purported investments.

27. In June 2005, the SEC confidentially requested the assistance of **KING** at the FSRC in determining whether SIBL and SFG had "perpetrated a fraud upon investors."

28. In September 2006, the SEC confidentially requested from **KING** at the FSRC, among other things, copies of "the FSRC's exam reports" regarding SIBL.

29. In or about January 2009, the SEC issued subpoenas to **STANFORD, HOLT** and DAVIS seeking both testimony and documents regarding SIBL's investment portfolio.

30. In late January 2009, the SEC notified SIBL's attorney that the SEC had scheduled sworn testimony of the SIBL President and **HOLT** to provide "credible and verifiable testimony regarding all of the assets" of SIBL.

31. On or about February 10, 2009, **HOLT** attended an SEC proceeding in Fort Worth, Texas, and provided sworn testimony to the SEC regarding SIBL's investment portfolio.

32. On or about February 16, 2009, the SEC filed a Complaint seeking emergency relief against SFG and related individuals and entities in the United States District Court for the Northern District of Texas ("the District Court"), alleging a "massive, on-going fraud." In its Amended Complaint, filed February 27, 2009, the SEC further alleged "misappropriation of billions of dollars of investor funds" and other fraudulent conduct.

33. On or about February 17, 2009, the District Court appointed an individual — known as a

Receiver — to take over SFG and its related entities to protect and preserve their investments and assets.

THE CONSPIRACY

34. From in or about at least September 1999, through on or about February 17, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt,

GILBERTO LOPEZ,

MARK KUHRT
and

LEROY KING,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, with JAMES M. DAVIS, and with others, known and unknown to the Grand Jury, to commit certain offenses against the United States, that is:

(a) to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that they were false and fraudulent when made, and causing to be delivered certain mail matter by the United States Postal Service and any private or commercial interstate carrier, according to the directions thereon, for the purpose of executing the

scheme, in violation of Title 18, United States Code, Section 1341;

(b) to devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted certain wire communications in interstate and foreign commerce, for the purpose of executing the scheme, in violation of Title 18, United States Code, Section 1343; and

(c) to, by use of the means and instrumentalities of interstate commerce, the mails, and wire communications, directly and indirectly, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, that is, certificates of deposit of the Stanford International Bank, Ltd. and in connection with such transactions, (i) employ devices, schemes, and artifices to defraud holders of the securities; (ii) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (iii) engage in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon holders of securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5.

PURPOSE OF THE CONSPIRACY

35. It was a purpose of the conspiracy that the defendants and their conspirators would solicit and

obtain billions of dollars of investors' funds through false pretenses, representations and promises, all in order to obtain substantial economic benefits for themselves and others through the payment of fees, wages, bonuses, and other monies, and unauthorized diversions, misuse, and misappropriation of funds.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their conspirators sought to accomplish the objects and purpose of the conspiracy included, among other things, the following:

36. It was a part of the conspiracy that the defendants and their conspirators would make and cause to be made false and misleading representations in promotional materials, periodic reports, newsletters, emails sent by mail and wire transmissions in interstate commerce to investors and others, and in conversations, presentations and meetings with investors and others, including the following:

False Statements Regarding the Value of SIBL's Finances:

(a) The defendants and their conspirators would make and cause to be made false and misleading representations concerning SIBL's financial condition touting year-by-year percentage and dollar amount increases in the purported value of its earnings, revenue, and assets, including an increase in the purported value of SIBL's assets from approximately $1.2 billion in 2001 to approximately $8.5 billion in December 2008, when, in truth and in fact, those values were false and designed to deceive

investors into believing that SIBL's "investments" were performing as falsely touted.

False Statements Regarding SIBL's Investment Strategy and Use of Investors' Funds:

(b) The defendants and their conspirators would make and cause to be made false and misleading representations concerning SIBL's investment strategy as seeking to "minimize risk and achieve liquidity," when, in truth and in fact, approximately 80% of SIBL's investment portfolio consisted of illiquid investments, such as (i) grossly overvalued real and personal property that SIBL had acquired from **STANFORD**-controlled entities through fraudulent "round trip" transactions and (ii) unsecured notes on more than a billion dollars in personal loans to **STANFORD**.

False Statements Regarding the Management of Investors' Funds:

(c) **STANFORD, HOLT,** DAVIS and others would make false and misleading misrepresentations that SIBL's entire investment portfolio was closely and well-managed, including identifying **HOLT** as SFG's "Chief Investment Officer" and as a member of SIBL's "Investment Committee," responsible for management of SIBL's entire portfolio of assets through a "global network" of "outside portfolio managers" and "money managers," when, in truth and in fact, **HOLT** ultimately "managed" less than approximately 10% of SIBL's investment portfolio.

False Statements Regarding Oversight by Antiguan Regulators:

(d) **STANFORD, KING,** DAVIS and others would make false and misleading representations regarding the nature and extent of regulatory oversight of SIBL, including that SIBL's operations and financial condition were being scrutinized by the FSRC in Antigua and that SIBL's financial statements were subject to annual audits and regulatory inspections by Antiguan regulators, when, in truth and in fact, **STANFORD** had made corrupt payments to **KING** in order to ensure that the FSRC did not accurately audit SIBL's financial statements or verify the existence or value of SIBL's assets as reflected in the SIBL financial statements.

37. It was further a part of the conspiracy that the defendants and their conspirators would create and cause to be created false and misleading accounting books and records and other documents concerning the financial condition and investment portfolio of SIBL, through, among other things, the following means:

(a) The defendants and their conspirators would create false books and records containing artificial values for SIBL's investment portfolio and its return on investment by causing already inflated values that had been reported to investors for prior periods to be adjusted (multiplied) by a percentage increase "as deemed necessary" to produce the new false investment and revenue values.

(b) The defendants and their conspirators would conceal and disguise as "investments" in SIBL's books and records, and fail to disclose in such books and records, that **STANFORD** had received

and not repaid more than a billion dollars of personal loans from SIBL.

(c) The defendants and their conspirators would conceal and disguise in SIBL's books and records fraudulent "roundtrip" transactions in which SIBL would transfer interests in real and personal property to **STANFORD**-controlled entities and then back to SIBL at grossly inflated values, in order to mask the artificially inflated values of those "assets" on SIBL's books and records, to falsely disguise and purportedly "settle" a substantial portion of the loans **STANFORD** had taken from SIBL, and to falsely inflate the value and disguise the nature of **STANFORD**' s purported capital contributions to SIBL.

38. It was further a part of the conspiracy that **STANFORD** would make regular secret corrupt payments of thousands of dollars in cash to **KING,** the Administrator and CEO of the FSRC, to ensure that, among other things:

(a) The FSRC would not exercise its true regulatory functions in verifying the existence and value of SIBL's investments;

(b) **KING** corruptly would provide to **STANFORD,** DAVIS and others information about official inquiries that the FSRC had received from United States regulators who had requested information from the FSRC regarding "possible fraud perpetrated upon investors" by SIBL; and

(c) **KING** would make false representations in response to official inquiries of regulators, including U.S. regulators, and would seek and receive the assistance of **STANFORD,** DAVIS and others, in preparing false responses to such inquiries.

39. It was further a part of the conspiracy that **STANFORD, HOLT,** DAVIS and others, would conceal from the SEC the true operations and financial condition of SIBL, and the true nature and value of its holdings, and would forestall the SEC's investigation through various means, including, among others, the following:

(a) **STANFORD, HOLT,** DAVIS and others would make and cause to be made false and misleading statements to SEC attorneys in order to persuade them to delay the sworn testimony of **STANFORD** and DAVIS by falsely representing that **HOLT** and SIBL's President could better explain specific details about SIBL's entire investment portfolio and assets rather than **STANFORD** and DAVIS; and

(b) **HOLT** would attend the SEC proceeding in Fort Worth, Texas, on February 10, 2009, at which **HOLT** would provide false sworn testimony regarding SIBL's investment portfolio, her knowledge of the portfolio, and her preparation for her testimony.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purpose thereof, at least one of the conspirators committed and caused to be committed, in the Southern District of Texas and elsewhere, at least one of the following overt acts, among others:

40. In or about April 2000, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 1999, which included representations that SIBL's total assets at year end 1999 were up 28.75% to $675.89 million, with a $3.81 million profit.

41. In or about April 2001, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 2000, which included representations that SIBL's total assets at year end 2000 were up 22.84% to $830.70 million, with profit up 31.61% to $5.01 million.

42. In or about April 2002, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 2001, which included representations that SIBL's total assets at year end 2001 were up 44.19% to $1.198 billion, with a "record" profit up 142.59% to $12.16 million.

43. In or about April 2003, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 2002, which included representations that SIBL's total assets at year end 2002 were up 43.1% to $1.7 billion, with a "record operating profit" up 97.9% to $23.7 million, and which included a "Report of Management" signed by **STANFORD** and DAVIS representing that the financial statements presented "fairly and consistently the Bank's financial position and results of operations."

44. In or about March 2004, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 2003,which included representations that SIBL's total assets at year end 2003 were up 29.9% to $2.2 billion, with a "record operating profit" up 39.7% to $33.1 million, and which included a "Report of Management" signed by **STANFORD** and DAVIS.

45. On or about February 7, 2005, **KING** caused a deposit to be made in the amount of approximately $15,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

46. On or about February 25, 2005, **KING** caused a deposit to be made in the amount of approximately $9,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

47. In or about March 2005, **STANFORD** and DAVIS caused to be sent to investors and placed on SIBL's website SIBL's Annual Report for 2004, which included representations that SIBL's total assets at year end 2004 were up 38.7% to $3.1 billion, with a "fifth consecutive year of record operating profit, reaching $36.2 million," and which also included a "Report of Management" signed by **STANFORD** and DAVIS.

48. On or about March 24, 2005, **KING** caused a deposit to be made in the amount of approximately $9,700 in U.S. currency into a bank account he controlled in Tucker, Georgia.

49. On or about June 21, 2005, **KING** represented in a letter to the SEC that if **STANFORD** were running a Ponzi scheme then the FSRC's examination of SIBL would have detected it, even though **KING** knew that, at his direction, the FSRC was not scrutinizing SIBL's operations and finances.

50. On or about December 30, 2005, **KING** caused a deposit to be made in the amount of approximately $6,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

51. In or about March 2006, **STANFORD** and DAVIS caused to be sent to investors and placed on SIBL's website SIBL's Annual Report for 2005, which included representations that SIBL's total assets at year end 2005 were up 31.5 % to $4.1 billion, with "operating profit" of $35.9 million,

"slightly down" from the 2004 "record profit" of $36.2 million, and which also included a "Report of Management" signed by **STANFORD** and DAVIS.

52. On or about March 10, 2006, **KING** caused deposits to be made in the total amount of approximately $9,800 in U.S. currency into bank accounts he controlled in Tucker, Georgia.

53. On or about March 14, 2006, **KING** caused a deposit to be made in the amount of approximately $7,000 in U.S. currency into a bank account he controlled in Acworth, Georgia.

54. On or about March 20, 2006, **KING** caused a deposit to be made in the amount of approximately $8,000 in U.S. currency into a bank account he controlled in Decatur, Georgia.

55. On or about March 27, 2006, **KING** caused a deposit to be made in the amount of approximately $5,000 in U.S. currency into a bank account he controlled in Acworth, Georgia.

56. On or about August 31, 2006, **KING** caused deposits to be made in the total amount of approximately $2,000 in U.S. currency into a bank account he controlled in Chamblee, Georgia.

57. On or about September 18, 2006, **KING** caused a deposit to be made in the amount of approximately $5,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

58. On or about September 21, 2006, **KING** caused a deposit to be made in the amount of approximately $6,000 in U.S. currency into a bank account he controlled in Chamblee, Georgia.

59. On or about September 25, 2006, **KING** delivered to **STANFORD** and DAVIS official correspondence which the FSRC had received from the SEC.

60. On or about September 25, 2006, **STANFORD, KING** and DAVIS had a conversation in which they discussed how to respond to an SEC request for information about SIBL.

61. On or about September 28, 2006, **KING** caused a deposit to be made in the amount of approximately $6,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

62. On or about October 10, 2006, **KING** provided to the SEC an official response of the FSRC regarding SIBL, which response contained text actually prepared by **STANFORD** and others.

63. On or about October 23, 2006, **KING** caused a deposit to be made in the amount of approximately $8,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

64. On or about January 11, 2007, **KUHRT** sent an email from Houston, Texas, to DAVIS in Tupelo, Mississippi, with a copy to **LOPEZ** in Houston, Texas, attaching an artificial SIBL revenue entry for December 2006 and noting that the SIBL President was looking for financials that he could present at an upcoming Top Producers Club event.

65. On or about January 31, 2007, **KING** caused a deposit to be made in the amount of approximately $4,000 in U.S. currency into a bank account he controlled in Tucker, Georgia.

66. On or about March 19, 2007, **KING** caused a deposit to be made in the amount of approximately

$6,000 in U.S. currency into a bank account he controlled in Hallandale, Florida.

67. In or about April 2007, **STANFORD** and DAVIS caused to be sent to investors and placed on SIBL's website SIBL's Annual Report for 2006, which included representations that SIBL's total assets at year end 2006 were up 31.5% to $5.3 billion, with an "operating profit of $28.8 million," and which also included a Report of Management signed by **STANFORD** and DAVIS.

68. On or about April 16, 2007, **KUHRT** sent an email from Houston, Texas, to DAVIS in Tupelo, Mississippi, with a copy to **LOPEZ,** in Houston, Texas, which attached a falsely inflated March 2007 revenue entry for SIBL.

69. On or about April 16, 2007, **KING** caused a deposit to be made in the amount of approximately $9,000 in U.S. currency into a bank account he controlled in Chamblee, Georgia.

70. In or about June 2007, **STANFORD, HOLT,** and DAVIS caused a newsletter, called the Stanford Eagle, to be sent to investors in which representations were made that SFG had "worldwide assets under management or advisement" exceeding $43 billion and which touted the "Stanford Investment Model" as one in which they would "carefully consider asset classes, investment strategies, sectors and regions of the world that most investors either don't have easy access to or rarely get information about."

71. On or about September 14, 2007, **KING** caused a deposit to be made in the amount of approximately $5,500 in U.S. currency into a bank account he controlled in Tucker, Georgia.

72. On or about December 24, 2007, **KING** caused a deposit to be made in the amount of approximately $4,470 in U.S. currency into a bank account he controlled in Tucker, Georgia.

73. On or about January 23, 2008, **KING** caused a withdrawal to be made in the amount of approximately $15,000 from a bank account he controlled in New York, New York and deposited the money into an investment account in New York.

74. On or about January 30, 2008, **KING** caused a deposit to be made in the amount of approximately $9,500 in U.S. currency into a bank account he controlled in Tucker, Georgia.

75. On or about March 10, 2008, Davis sent a fax to **KUHRT** concerning creation of false revenue entries for SIBL and instructing **KUHRT** to reduce equities and increase fixed income.

76. In or about April 2008, **STANFORD** and DAVIS caused to be sent to investors SIBL's Annual Report for 2007, which included representations that SIBL's total assets grew by 32.3% to $7.1 billion and that SIBL earned a "record operating profit of $43.6 million," and which also included a Report of Management signed by **STANFORD** and DAVIS.

77. On or about April 8, 2008, **KUHRT** caused an SFG employee to send a fax from Houston, Texas, to DAVIS in Tupelo, Mississippi, which sought DAVIS' review and approval of false amounts to insert in the monthly report for SIBL's "Return on Investment" for March 2008, and asked what figures to reduce with the understanding that year-to-date income "should be about $1.8 million loss."

78. On or about April 8, 2008, DAVIS caused a reply fax to be sent from Tupelo, Mississippi, back to an SFG employee in Houston, Texas, titled: "SIBL Accrual for Approval MAR 2008," in which DAVIS provided handwritten instructions regarding the need to "reduce equity" to "come in line with" a $1.8M loss.

79. On or about April 23, 2008, **KING** caused a deposit to be made in the amount of approximately $9,600 in U.S. currency into a bank account he controlled in Chamblee, Georgia.

80. On or about June 30, 2008, **KING** caused a deposit to be made in the amount of approximately $7,000 in U.S. currency into a bank account he controlled in Chamblee, Georgia.

81. In or about July 2008, **STANFORD** caused SIBL to sell interests in "island properties" to an entity controlled by **STANFORD,** which interests SIBL had acquired in 2008 for approximately $63.5 million.

82. In or about September and November 2008, **STANFORD** transferred interests in these "island properties" back to SIBL at a purported value of approximately $3.2 billion, a portion of which was than purportedly used to settle loans made by SIBL to **STANFORD** and as "capital contributions" of **STANFORD** to SIBL.

83. In or about fall 2008, **STANFORD, KUHRT, LOPEZ, KING** and DAVIS caused bogus reports to be provided to the FSRC and investors falsely representing the value of SIBL's total investments and including specific entries establishing grossly inflated values for real estate purportedly held by SIBL.

84. On or about October 8, 2008, **KUHRT** caused an SFG employee to send a fax from St. Croix, U.S. Virgin Islands, to DAVIS, concerning "SIBL Accrual for Approval/SEPTEMBER 2008 ADDENDUM," and containing false revenue entries.

85. On or about October 28, 2008, **HOLT** sent an email to an SFG employee in which **HOLT** represented that there had been "no loss on the portfolio," that "a $235 million capital infusion was just made, "and that the liquidity stood at 1.5 billion."

86. On or about November 10, 2008, **KUHRT** sent an email from St. Croix, U.S. Virgin Islands, to DAVIS in Tupelo, Mississippi, with a copy to **LOPEZ** in Houston, Texas, which attached various fabricated Return on Investment scenarios for SIBL.

87. In or about December 2008, **STANFORD, HOLT,** DAVIS and others caused to be sent to investors in Houston, Texas, and elsewhere SIBL's Monthly Report for December 2008, which falsely represented that SIBL had received a "capital infusion" of approximately $541 million from **STANFORD**.

88. On or about December 8, 2008, **KING** caused a deposit to be made in the amount of approximately $6,800 in U.S. currency into a bank account he controlled in Miami, Florida.

89. On or about December 11, 2008, **KUHRT** caused an SFG employee to send a fax from St. Croix, U.S. Virgin Islands, to DAVIS in Tupelo, Mississippi, regarding the "SIBL Accrual for Approval NOVEMBER 2008," which provided a false adjustment to show a small loss to deflect scrutiny of SIBL's records.

90. On or about December 23, 2008, **LOPEZ, KUHRT** and others caused a spreadsheet to be created outlining the "sale" and grossly inflated "valuation" of the island properties.

91. On or about December 24, 2008, **KING** caused a deposit to be made in the amount of approximately $4,200 in U.S. currency into a bank account he controlled in Tucker, Georgia.

92. On or about January 5, 2009, **KUHRT** caused an email to be sent from St. Croix, U.S. Virgin Islands, to **LOPEZ** in Houston, Texas, which attached a spreadsheet concerning an artificial "roundtrip" real estate transaction to transfer interests in real estate back to SIBL.

93. On or about January 10, 2009, **STANFORD, HOLT,** DAVIS and others made presentations at a Top Producer's Club meeting in Miami, Florida, at which they falsely touted the state of SIBL's investments and financial condition.

94. On or about January 16, 2009, **STANFORD, HOLT,** DAVIS and others made presentations at a Top Producer's Club meeting in Phoenix, Arizona, at which they falsely touted the state of SIBL's investments and financial condition.

95. On or about January 21, 2009, at a meeting at **STANFORD**'s aircraft hangar in Miami, Florida, **STANFORD, HOLT,** DAVIS and others discussed how to respond to subpoenas that had been issued by the SEC in connection with an on-going investigation.

96. In or about January 2009, DAVIS instructed SIBL's Treasurer to destroy SIBL records which had been moved to Antigua.

97. On or about January 22, 2009, at a meeting with SEC attorneys at a restaurant in Houston, Texas, SIBL's attorney represented to the SEC attorneys that SIBL was "not a criminal enterprise" and that "all assets are there."

98. On or about January 23, 2009, at a meeting between SIBL's attorney and an SEC attorney at SFG's offices in Houston, Texas, SIBL's attorney requested that the SEC attorney defer the SEC subpoenas to **STANFORD** and DAVIS, and represented that **HOLT** and the SIBL President would be better witnesses than **STANFORD** and DAVIS, whom SIBL's attorney claimed were executive level officers of the company not involved in the "nuts and bolts," and who could not tell the SEC attorneys about details of the bank's assets.

99. On or about January 24, 2009, SIBL's attorney sent an email to an SFG employee, forwarded on or about January 25, 2009, from the SFG employee to **HOLT,** DAVIS and others, with a copy to **STANFORD,** in which SIBL's attorney stated that he had persuaded the SEC that **HOLT** and the SIBL President would be better witnesses to testify about SIBL's entire portfolio of assets and stated that **HOLT** would "have to get up to speed on Tier 3."

100. On or about January 27, 2009, SIBL's attorney sent an email to **HOLT** and SIBL's President, with a copy to DAVIS and an SFG employee, regarding the need to address all three tiers of the SIBL asset portfolio, stating that they needed to "rise to the occasion" and that "our livelihood depends on it."

101. On or about February 4, 2009, **HOLT**, DAVIS and others met in Miami, Florida, and discussed the SEC testimony of **HOLT** and the SIBL President, **STANFORD**'s recent capital contribution to SIBL, SIBL's purported substantial investment in real estate, and SIBL's unsecured loans to **STANFORD**.

102. On or about February 4, 2009, at the Miami meeting, **HOLT** suggested that she only disclose in her testimony to the SEC the June 30, 2008 SFG financials as those numbers "looked better."

103. On or about February 10, 2009, prior to **HOLT**' s testimony before the SEC, DAVIS spoke by telephone with **HOLT** regarding her planned testimony at the SEC proceeding.

104. On or about February 10, 2009, **HOLT** and SIBL's attorney attended an SEC proceeding in Fort Worth, Texas, at which **HOLT** provided sworn testimony to the SEC in which she (1) did not disclose the Miami meetings to prepare her testimony; and (2) represented that she did not know specifically the nature and allocation of assets in Tier III.

105. On or about February 11, 2009, **HOLT** caused funds in the amount of approximately $4.3 million to be sent by wire transfer from the Bank of New York to SIBL's operating account at the Bank of Houston in Houston, Texas.

106. On or about February 11, 2009, **STANFORD** caused a letter, addressed "Dear Client," to be sent to investors, in which **STANFORD** made representations that SIBL "remains a strong institution" and that he had "already added two capital infusions into the bank."

107. On or about February 12, 2009, **STANFORD** sent an email to SFG global employees, including employees in Houston, Texas, in which **STANFORD** made representations that SIBL "remained a strong institution" and that he had made "two recent capital infusions" into SIBL.

108. On or about February 13, 2009, **HOLT** caused funds in the amount of approximately $170,177 to be sent by wire transfer from the Bank of New York to SIBL's operating account at the Bank of Houston in Houston, Texas.

109. On or about February 17, 2009, at a meeting with SEC attorneys in Memphis, Tennessee, **HOLT** represented to the SEC attorneys that if she "knew anything about Tier III" she would tell them.

110. The acts alleged in Counts 2 through 18 of the Indictment are realleged and incorporated herein as additional overt acts in furtherance of the conspiracy and to achieve the objects and purpose thereof.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH EIGHT
Wire Fraud
(Violation of 18 U.S.C. §§ 1343 and 2)

1. Paragraphs 1 through 33 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Among the persons and entities purchasing SIBL's CDs were persons known to the Grand Jury and referred to herein as "Investor JD" and "Investor WJ."

3. From in or about at least September 1999, the exact date being unknown to the Grand Jury, through on or about February 17, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt,

GILBERTO LOPEZ,

MARK KUHRT
and

LEROY KING,

aided and abetted by each other and others, known and unknown to the Grand Jury, did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made.

PURPOSE OF THE SCHEME AND ARTIFICE

4. It was a purpose of the scheme and artifice that the defendants and their co-schemers would solicit and obtain billions of dollars of investors' funds through false pretenses, representations and promises, all in order to obtain substantial economic benefits for themselves and others through the payment of fees, wages, bonuses, and other monies,

and unauthorized diversions, misuse, and misappropriation of funds.

SCHEME AND ARTIFICE

5. Paragraphs 36 through 39 of Count 1 of this Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE WIRES

6. On or about the dates specified as to each count below, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATIONS
2	June 14, 2005	Wire transmission of approximately $39,965 from an account at Wells Fargo Bank in Houston, Texas, to a bank account in New York, New York, regarding Investor JD's purchase of an SIBL Certificate of Deposit
3	January 11, 2007	Email from **KUHRT** in Houston, Texas, to DAVIS in Tupelo, Mississippi, with a copy to **LOPEZ** in Houston, Texas, attaching false revenue entry for SIBL for December 2006

4	April 16, 2007	Email from **KUHRT** in Houston, Texas, to DAVIS in Tupelo, Mississippi, with a copy to **LOPEZ** in Houston, Texas, attaching false revenue entry for SIBL for March 2007
5	November 10 , 2008	Email from **KUHRT** in St. Croix, U.S. Virgin Islands, to Davis in Tupelo, Mississippi, with a copy to **LOPEZ** in Houston, Texas, attaching bogus scenarios for Return on Investment for SIBL
6	December 24, 2008	Wire transmission of approximately $700,000 from an account at Frost Bank in Houston, Texas, to a bank account for SIBL in New York, New York, regarding Investor WJ's purchase of SIBL Certificates of Deposit
7	January 5, 2009	Email from **KUHRT** in St. Croix, U.S. Virgin Islands, to **LOPEZ** in Houston, Texas, attaching spreadsheet concerning artificial "roundtrip" real estate transaction to transfer interests in island properties back to SIBL

8	February 12, 2009	Email from **STANFORD** to SFG Global Employees transmitted to employees in Houston, Texas, Memphis, Tennessee, and elsewhere representing that SIBL "remained a strong institution" and that he had made "two recent capital infusions" into SIBL

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS NINE THROUGH EIGHTEEN
Mail Fraud
(Violation of 18 U.S.C. §§ 1341 and 2)

1. Paragraphs 1 through 33 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Among the persons and entities purchasing SIBL's CDs was a person known to the Grand Jury and referred to herein as "Investor TA."

3. From in or about at least September 1999, the exact date being unknown to the Grand Jury, through on or about February 17, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt,

GILBERTO LOPEZ,

MARK KUHRT
and
LEROY KING,

aided and abetted by each other and others known and unknown to the Grand Jury, did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made.

PURPOSE OF THE SCHEME AND ARTIFICE

4. It was a purpose of the scheme and artifice that the defendants and their co-schemers would solicit and obtain billions of dollars of investors' funds through false pretenses, representations and promises, all in order to obtain substantial economic benefits for themselves and others through the payment of fees, wages, bonuses, and other monies, and unauthorized diversions, misuse, and misappropriation of funds.

SCHEME AND ARTIFICE

5. Paragraphs 36 through 39 of Count 1 of this Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

USE OF THE MAILS

6. On or about the dates specified as to each count below, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud, and attempting to do so, knowingly deposited and caused to be deposited the matters and things listed below,

and caused the matters and things to be sent and delivered, by private and commercial interstate carrier and by the United States Postal Service:

COUNT	APPROX. DATE	DESCRIPTION
9	July 31, 2006	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua
10	December 31, 2007	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua
11	January 29, 2008	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua

12	February 22, 2008	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua
13	August 13, 2008	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua
14	September 18, 2008	Package of documents, including investor subscription information, sent and delivered via Federal Express (FedEx) from SGC in Houston, Texas, and delivered to SIBL in Antigua
15	October 22, 2008	Mail matter containing an SIBL Certificate of Deposit purchased by Investor TA sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.

16	November 30, 2008	Mail matter containing a purported SIBL account statement for Investor TA sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.
17	December 31, 2008	Mail matter containing a purported SIBL account statement for Investor TA sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.
18	January 31, 2009	Mail matter containing a purported SIBL account statement for Investor TA sent and delivered via United States Postal Service to Investor TA's address in Spring, Texas.

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT NINETEEN
Conspiracy to Obstruct SEC Investigation
(Violation of 18 U.S.C. § 371)

1. Paragraphs 1 through 33 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

THE CONSPIRACY

2. From in or around 2005, the exact date being unknown to the Grand Jury, through in or around March 3, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt
and

LEROY KING,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, with JAMES M. DAVIS, and with others, known and unknown to the Grand Jury, to commit a certain offense against the United States, that is: to corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, in whole or in part, a pending proceeding before any department and agency of the United States of America, that is, the Securities and Exchange Commission (SEC), in violation of 18 U.S.C. § 1505.

PURPOSE OF THE CONSPIRACY

3. It was a purpose of the conspiracy that the defendants and their conspirators would corruptly influence, obstruct and impede the SEC's investigation of SFG and SIBL, including the SEC's efforts to ascertain SIBL's true financial condition and the content and value of SIBL's investment portfolio, all in an effort to, among other things, perpetuate and prevent detection of an ongoing fraud and continue receiving economic benefits from the fraud.

MANNER AND MEANS OF THE CONSPIRACY

4. Paragraphs 38 through 39 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the manner and means by which the defendants and their conspirators sought to accomplish the objects and purpose of the conspiracy.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purpose thereof, at least one of the conspirators committed and caused to be committed, in the Southern District of Texas and elsewhere, at least one of the following overt acts, among others:

5. Paragraphs 45, 46, 48, 49, 50, 52 through 63, 65, 66, 69, 71 through 74, 79, 80, 88, 91, 95 through 105, 108 and 109 of Count One of the Indictment are re-alleged and incorporated by reference as though fully set forth herein as overt acts.

6. On or about February 23, 2009, **KING** caused approximately $150,000 to be transferred from his investment account in New York, New York, to a bank account he controlled in Antigua.

7. On or about February 26, 2009, an attorney at the SEC sent a letter to **KING** seeking assistance of the FSRC ("SEC Request for Assistance Letter") to determine, among other things, the amount of investor funds which were in SIBL accounts and to identify persons who had been involved in the fraudulent scheme or had been victims of the scheme.

8. On or about March 2, 2009, **KING** caused approximately $410,000 to be transferred from his investment account in New York, New York, to a bank account he controlled in Antigua.

9. On or about March 3, 2009, in response to the SEC Request for Assistance Letter, **KING** sent a letter to the SEC denying the request and stating that the FSRC had "no authority to act in the manner requested and would itself be in breach of law if it were to accede to your request."

All in violation of Title 18, United States Code, Section 371.

COUNT TWENTY
Obstruction of SEC Investigation
(Violation of 18 U.S.C. §§ 1505 and 2)

1. Paragraphs 1 through 33 and 38 through 39 of Count One and paragraphs 5 through 9 of Count Nineteen of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around 2005, the exact date being unknown to the Grand Jury, through in or around March 3, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt
and

LEROY KING,

aided and abetted by JAMES M. DAVIS and others, known and unknown to the Grand Jury, did corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede, in whole or in part, a pending proceeding before any department and agency of the United States of America, that is, the Securities and Exchange Commission.

In violation of Title 18, United States Code, Sections 1505 and 2.

COUNT TWENTY-ONE
Conspiracy to Commit Money Laundering
(Violation of 18 U.S.C. § 1956(h))

1. Paragraphs 1 through 33 and 36 through 39 of Count One of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

THE CONSPIRACY TO COMMIT MONEY LAUNDERING

2. Beginning in or around at least September 1999, the exact date being unknown to the Grand Jury, through on or about February 17, 2009, in the Southern District of Texas and elsewhere, the defendants,

ROBERT ALLEN STANFORD
a/k/a Sir Allen Stanford
a/k/a Allen Stanford,

LAURA PENDERGEST-HOLT
a/k/a Laura Pendergest
a/k/a Laura Holt,

GILBERTO LOPEZ,

MARK KUHRT
and
LEROY KING,

did knowingly and intentionally conspire, combine, confederate, and agree with each other, with JAMES DAVIS, and with others, known and unknown to the Grand Jury, to transport, transmit, or transfer a monetary instrument and funds from a place in the United States to or through a place outside the United States, or to a place in the United States from or through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, that is, wire fraud, mail fraud, and securities fraud, in violation of Title 18, United States Code, Section 1956(a)(2)(A).

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects of the conspiracy included, among others, the following:

3. It was a part of the conspiracy that **STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others would cause the movement of millions of dollars of fraudulently obtained investors' funds from and among bank accounts located in the Southern District of Texas and elsewhere in the United States to various bank accounts located outside of the United States, including as follows:

(a) **STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others would cause investors and potential investors in SIBL's products to transfer the investors' funds into bank accounts located in the

Southern District of Texas which were maintained by **STANFORD**;

(b) **STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others would subsequently cause the transfer of the investors' funds in amounts exceeding $10,000 from bank accounts located in the Southern District of Texas into intermediary bank accounts located outside of the United States; and

(c)**STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others, would cause the transfer of investors' funds from intermediary bank accounts into other bank accounts located outside of the United States in order for **STANFORD, HOLT** and DAVIS to exercise exclusive control over the investors' funds.

4. It was further a part of the conspiracy that **STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others would cause the movement of millions of dollars of fraudulently obtained investors' funds from and among bank accounts outside the United States to various bank account in the United States, in the Southern District of Texas and elsewhere, as follows:

(a) **STANFORD, HOLT, KUHRT, LOPEZ,** DAVIS and others would cause the transfer of funds from bank accounts outside the United States to bank accounts in the United States in order to repay investors who had requested redemption of their SIBL CDs and to perpetuate the false appearance that SIBL was financially sound and was operating in accordance with the representations it had made to investors; and

(b) **STANFORD** would make thousands of dollars of corrupt payments to **KING** outside the United States and **KING,** in turn, would transport the funds into the United States and deposit them into bank accounts at financial institutions in the United States.

All in violation of Title 18, United States Code, Section 1956(h).

NOTICE OF FORFEITURE
28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(c); 18 U.S.C. § 982(a)(1)

A. As To Counts One through Eighteen

Pursuant to Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(c), the United States gives notice to the defendants, **ROBERT ALLEN STANFORD, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT** and **LEROY KING,** that in the event of their conviction of any of the offenses charged in Counts One through Eighteen of this Indictment, the United States intends to forfeit the following property:

(a) All property, real or personal, which constitutes or is derived from proceeds traceable to each such offense, including the conspiracy to commit such offenses, including but not limited to all monies on deposit in the following bank accounts:

HSBC Bank, PLC, London, United Kingdom

Beneficiary	Account Number
Stanford International Bank Ltd.	XXXX0160

	XXXX3136
	XXXX8105
	XXXX0538

Credit Suisse, United Kingdom

Beneficiary	Account Number
Stanford International Bank, Ltd.	LDXXX051
	LDXXX465
	LDXXX830
	2LFXXX651
	LDXXX909

SG Private Banking, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XXX800
Stanford International Bank (Antigua)	XXX801
Stanford Financial Group LTD, Lausanne	XXX731
Robert Allen Stanford	XXXX600

SG Private Banking, Lausanne, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXX782

Banque Franck Galland & Cie S.A., Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXX-XXXX-934

Banque Franck, Galland, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XXX058

Bank Julius Baer and Co. Ltd., Zurich

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXX9574

Julius Baer, Zurich, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XX.XXX.6744

RBS Coutts, Zurich, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XX XXX 375

Coutts Bank Von Ernst, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXXXXXXXXXX51 10AF

Toronto Dominion Bank, Canada

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXX-XXX1573
	XXXXXX-XXX1670
	XXXXXX-XXX4235
	XXXXXX-XXX0513
	XXXXXX-XXX0380
	XXXXXX-XXX5558
	XXXXXX-XXX5569
	XXXXXX-XXX5624

(b) Defendants are further notified that the United States will seek a money judgment in an amount equal to the total amount of proceeds derived from each such offense for which defendants **ROBERT ALLEN STANFORD, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT** and **LEROY KING** are convicted, for which the defendants may be jointly and severally liable.

B. As To Count Twenty-One

Pursuant to Title 18, United States Code, Section 982(a)(1), the United States gives notice to the defendants, **ROBERT ALLEN STANFORD, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT** and **LEROY KING,** that in the event of their conviction of the offense charged in Count Twenty-One, the United States intends to forfeit the following property:

(a) All property, real or personal, involved in a violation of the offense listed in Count Twenty-One, and any property, real or personal, traceable to such property, including, but not limited to all monies on deposit in the following bank accounts:

HSBC Bank, PLC, London, United Kingdom

Beneficiary	Account Number
Stanford International Bank Ltd.	XXXX0160
	XXXX3136
	XXXX8105
	XXXX0538

Credit Suisse, United Kingdom

Beneficiary	Account Number
Stanford International Bank, Ltd.	LDXXX051
	LDXXX465
	LDXXX830
	2LFXXX651
	LDXXX909

SG Private Banking, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XXX 800
Stanford International Bank (Antigua)	XXX 801

Stanford Financial Group LTD, Lausanne	XXX 731
Robert Allen Stanford	X XXX 600

SG Private Banking, Lausanne, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXX 782

Banque Franck Galland & Cie S.A., Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXX-XXXX-934

Banque Franck, Galland, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XXX 058

Bank Julius Baer and Co. Ltd., Zurich

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXX9574

Julius Baer, Zurich, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XX.XXX.6744

RBS Coutts, Zurich, Switzerland

Beneficiary	Account Number
Stanford International Bank (Antigua)	XX XXX 375

Coutts Bank Von Ernst, Geneva, Switzerland

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXXXXXXXXXXX 5110AF

Toronto Dominion Bank, Canada

Beneficiary	Account Number
Stanford International Bank, Ltd.	XXXXXX-XXX1573
	XXXXXX-XXX1670
	XXXXXX-XXX4235
	XXXXXX-XXX0513
	XXXXXX-XXX0380
	XXXXXX-XXX5558
	XXXXXX-XXX5569
	XXXXXX-XXX5624

(b) A money judgment in an amount equal to the total amount of property involved in such offense of which defendants **ROBERT ALLEN STANFORD, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT** and **LEROY KING** are convicted, for which the defendants may be jointly and severally liable.

SUBSTITUTE ASSETS

In the event that property subject to forfeiture, as a result of any act or omission of the defendants, **ROBERT ALLEN STANFORD, LAURA PENDERGEST-HOLT, GILBERTO LOPEZ, MARK KUHRT** and **LEROY KING,**

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property that cannot be divided without difficulty,

it is the intent of the United States to seek forfeiture of any other property of the defendants up to the total value of the property subject to forfeiture, pursuant to Title 21, United States Code, Section 853(p), incorporated by reference in Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982(b)(1).

A TRUE BILL:

ORIGINAL SIGNATURE
ON FILE

FOREPERSON

TIM JOHNSON

United States Attorney

/s/ Gregg Costa

GREGG COSTA
Assistant United States Attorney

STEVEN A. TYRRELL
Chief
Fraud Section, Criminal Division
U.S. Department of Justice

/s/ Paul E. Pelletier

PAUL E. PELLETIER
Principal Deputy Chief
JACK B. PATRICK
Senior Litigation Counsel
MATTHEW KLECKA
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice

EXHIBIT 3

United States District Court
Northern District of Texas

UNITED STATES OF AMERICA

v.

LAURA PENDERGEST-HOLT

FILED
FEB 25, 2009
CLERK,
U.S. DISTRICT COURT

CRIMINAL COMPLAINT
CASE NO.: 3-09-MJ-56

I, the undersigned complainant, being duly sworn state the following is true and correct to the best of my knowledge and belief. From on or about January 20, 2009 through on or about February 18, 2009, in Dallas County, in the Northern District of Texas and elsewhere, the defendant, a citizen of the United States, did

> obstruct a proceeding before an agency of the United States, that is, the Securities and Exchange Commission (SEC),

in violation 18 U.S.C. § 1505.

I further state that I am a Special Agent with Federal Bureau of Investigation (FBI), and that this Complaint is based on the following facts:

> See attached Affidavit of **Special Agent Vanessa G. Walther, FBI**, which is incorporated and made a part hereof by reference.

/s/ Vanessa G. Walther
Signature of Complainant
VANESSA G. WALTHER,
Special Agent - FBI

Sworn to before me and subscribed in my presence this 25 day of February 2009, at Dallas, Texas.

Wm. F. SANDERSON, JR.

UNITED STATES MAGISTRATE JUDGE
Name & Title of Judicial Officer

/s/ Wm. F. Sanderson Jr.
Signature of Judicial Official

STATE OF TEXAS)
)
COUNTY OF DALLAS)

AFFIDAVIT

I, Vanessa G. Walther, being duly sworn, depose and state as follows:

I. Introduction

1. This affidavit is submitted in support of a complaint charging LAURA PENDERGEST-HOLT ("PENDERGEST-HOLT") with obstruction of a proceeding before an agency of the United States, this is, the Securities and Exchange Commission ("SEC"), in violation of 18 U.S.C. §1505.

II. Affiants Background and Experience

2. I have been a Special Agent with the Federal Bureau of Investigation ("FBI") for 14 years. I have been a case agent on numerous white collar investigations to include high yield investment fraud schemes, securities and commodities fraud schemes, and other wire fraud and mail fraud schemes.

III. The Investigation

3. Since June of 2008, I and others on behalf of the FBI, Special Agents with the Internal Revenue Service ("IRS") Criminal Investigations, and Postal Inspectors from the United States Postal Inspection Service ("USPIS"), have been conducting an investigation into allegations that executives of Stanford Financial Group ("SFG"), by and through companies under their control, including, but not limited to, Stanford International Bank Ltd. ("SIB") and its affiliated Houston-based investment

advisors, Stanford Group Company ("SGC") and Stanford Capital Management ("SCM"), have defrauded investors and account holders of more than $8 billion in deposits. We have been conducting this investigation parallel to an investigation being conducted by the Securities and Exchange Commission ("SEC") Regional Office in Ft. Worth, Texas. I am also investigating related schemes aimed at obstructing federal regulatory entities.

4. The information contained in this affidavit is based upon information I have gathered during the course of my investigation, including, but not limited to, interviews of past and current employees of SFG, SIB and other related entities, interviews with various regulators, and a review of documents and electronic media obtained by me, as well as documents obtained from the SEC and other federal and state agencies, including transcripts of sworn testimony before the SEC. This affidavit does not include all of the facts I have learned during the course of the investigation, but only sufficient facts to establish probable cause for the crimes set forth herein.

IV. Background of the SFG Entities and Certain Executives

5. SIB is a private, offshore bank that purports to have an independent Board of Directors, an Investment Committee, a Chief Investment Officer, and a team of research analysts. Although SIB is domiciled in Antigua-Barbuda, a small group of SFG employees maintain offices in Memphis, Tennessee, Tupelo, Mississippi, Miami, Florida, Houston, Texas, and elsewhere.

6. SIB's primary product is a certificate of deposit ("CD"). SIB, by and through SGC financial advisors, has sold approximately $8 billion worth of their CD's by promising high return rates that exceed those available through true certificate of deposits offered by traditional banks. SIB offered 7.45% as of June 5, 2005, and 7.878% as of March 20, 2006, for a fixed rate CD based on an investment of $100,000. On November 28, 2008, SIB quoted 5.375% on a 3 year CD, while CD's offered by U.S. banks paid under 3.2%, and SIB has recently quoted rates of over 10% on five year CD's. In addition, over the past 15 years, SFG claims in promotional materials that its "diversified portfolio of investments," which served as the conduit for concealing the alleged fraud on investors, produced returns significantly better than the S&P 500. By way of example, SFG reported losses of only 1.3% in 2008, a time during which the S&P 500 lost 39% and the Dow Jones STOXX Europe 500 Fund lost 41%.

7. In order to facilitate the sale of SIB CD's, SGC recruited established financial advisors, and the advisors, in turn, brought with them investors with whom they had relationships of trust. Financial advisors at SGC received a 1% commission upon the sale of CD's, and were eligible to receive as much as a 1% "trailing commission" throughout the term of the CD. As such, SGC's commission structure promoted the sale of SIB CD's above all other SIB products.

8. In selling the SIB CD's, SFG touted the liquidity of its "diversified" portfolio. For example, in one CD brochure, SFG emphasized the importance of liquidity, stating, under the header of "Depositor Scrutiny," that the bank focuses on

"maintaining the highest degree of liquidity as a protective factor for our depositors" and that the bank's assets are "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." Indeed, SGC advisors were trained to promote the "liquidity" of the CD portfolio. SFG promoted the CD products as secure investments that were very liquid and had very low risk. In addition, investors were told SFG's portfolio was invested by expert money mangers throughout the world.

9. SIB's "diversified portfolio of investments" is purportedly managed primarily from Memphis, Tennessee and Tupelo, Mississippi. Based upon information gathered during the investigation, it appears that this portfolio is segregated into three investment tiers: (a) cash and cash equivalents ("TIER I"), (b) investments with "outside portfolio managers" ("TIER II"), and (c) unknown assets under the apparent control of SGC Executive A and SGC Executive B ("TIER III"). As of December, 2008, TIER I represented approximately 9% ($800 million) of the bank's investment portfolio, TIER II represented 10% of the bank's portfolio, and TIER III represented 81% of the bank's portfolio. Actual and potential investors do not appear to have been advised of the three-tier investment structure.

10. SFG Executive A is a member of the board and a shareholder of SFG and its related entities to include SIB. SFG Executive B is a member of the board and an officer of SFG and purportedly manages the SIB portfolio in conjunction with PENDERGEST-HOLT from the SFG offices in Memphis, Tennessee and Tupelo, Mississippi.

Attorney A was retained by SFG to represent the companies in regulatory matters.

11. In 1997, PENDERGEST-HOLT, who possessed an undergraduate degree in Mathematics, began employment with SFG as a "Research Analsyt." PENDERGEST-HOLT was appointed to the SIB "Investment Committee" at a Board of Directors meeting she attended on December 7, 2005, as evidenced by the minutes of that meeting, a copy of which was emailed to her on June 13, 2006. She also served as Chief Investment Officer of SFG and, along with a team of analysts, directly oversaw TIER II of SIB's portfolio which included approximately 10% of SIB's entire investment portfolio. PENDERGEST-HOLT operated primarily from the SFG offices in Tupelo, Mississippi and Memphis, Tennessee. PENDERGEST-HOLT supervised the proprietary research group and helped produce the Stanford Investment Model. In addition to preparing monthly and quarterly research reports, PENDERGEST-HOLT and her team prepared and reviewed monthly and quarterly financial reports published by SIB. PENDERGEST-HOLT reviewed the monthly and quarterly financial reports, which were used to support the appearance of SIB's solvency, prior to their dissemination to Antiguan bank regulators.

V. The SEC Investigation

12. In January 2009, the SEC issued subpoenas to SFG and its related entities, and to SFG Executive A, SFG Executive B and PENDERGEST-HOLT. On January 21, 2009, PENDERGEST-HOLT participated in a meeting at Stanford Aviation's hanger at an airport in Miami, Florida. Present at

that meeting was SFG Executive A, via teleconference, SFG Executive B, Attorney A, SIB Affiliate President, and the following SFG employees: Cooperating Witness 1 ("CW1"), Cooperating Witness 2 ("CW2"), and Cooperating Witness 3 ("CW3"). At that meeting, the group agreed that Attorney A would notify the SEC that SIB Affiliate President and PENDERGEST-HOLT should be the individuals to testify before the SEC about the entire SIB portfolio. It was further agreed that they would all meet again in Miami during the week of February 2, 2009 to review and critique presentations by PENDERGEST-HOLT and SIG Affiliate President in preparation for their SEC testimony.

13. On January 22, 2009, staff members of the SEC met with Attorney A to discuss issues regarding the SEC's testimonial and documentary subpoenas. The SEC staff informed Attorney A at this meeting that they wanted to depose individuals with knowledge of the "entire investment portfolio." Attorney A also informed the SEC staff that SFG Executives A and B were not the individuals from whom the SEC should take testimony, but, instead, PENDERGEST-HOLT and SIB Affiliate President could provide information regarding SFG's entire investment portfolio. Toward the end of the meeting, Attorney A stated to the SEC staff that the SEC needed to change their view of SFG. Attorney A remarked, "this is not a criminal enterprise." Attorney A agreed, however, that SIB Affiliate President and PENDERGEST-HOLT would appear for testimony before the SEC on February 9th and 10th, 2009.

14. On January 24, 2009, Attorney A sent an email to CW1, setting forth his understanding of the agreement that had been reached with the SEC at the meeting earlier that day. On January 26, 2009, CW2 forwarded the same email to SFG Executive A, SFG Executive B, PENDERGEST-HOLT, and SIB Affiliate President. In the email, Attorney A confirmed that subpoenas had been issued to SFG Executives A and B, and PENDERGEST-HOLT because "the SEC had been told that the people who really know about the bank portfolio are [Executive A], [Executive B], and Laura [PENDERGEST-HOLT.]" Attorney A further confirmed in the email that he had "persuaded [the SEC's staff] that [SFG Executives A and B] do not 'micro-manage' and instead delegate, so that the better people to explain details about the portfolio are [SIB Affiliate President] and Laura [PENDERGEST-HOLT]." Attorney A further confirmed in the email that "[w]e can fully anticipate that the SEC will want [SIB Affiliate President] to testify under oath that the bank is 'real,' the CDs are 'real,' that the money is actually invested as described in our documents, and that client funds in the CDs are safe and secure. The [SEC] staff will want to be protected against obstruction and perjury ... [SIB Affiliate President] will have to be fully and carefully prepared so that he can provide details as best as humanly possible."

15. In the January 24, 2009 email, Attorney A further confirmed that "Laura [PENDERGEST-HOLT] will have 2 to 3 hours to explain her supervision and management of the bank portfolio" to the SEC staff. Attorney A noted that "one problem [he] foresee[s] is that she knows about tier 1 and tier 2, but little about tier 3.

[PENDERGESTHOLT] will have to get up to speed on tier 3 before the SEC investigation." Attorney A further noted in his January 24th email that "[he] would like to make sure that [SIB Affiliate President] and Laura [PENDERGEST-HOLT] have ample time to prepare and practice the week before the SEC meeting."

16. The SEC staff, by way of email dated February 4, 2009 to Attorney A, reminded Attorney A that the testimony of PENDERGEST-HOLT and SIB Affiliate President "need[ed] to account, in a manner that can be verified by the [SEC], for SIB's *entire portfolio of assets*."

17. On January 27, 2009, Attorney A sent an email to SIB Affiliate President and PENDERGEST-HOLT stating they should be able to provide the SEC with:

"positive proof" that investor funds are invested as and where we say they are.

> We need to "account for" the full amount stated in the financial statements related to the CDs. E.g., if we say there is $8.2 billion attributed to the CDs, we have to account for the full $8.2 billion. (The SEC staff told me they are not interested in the full $50 or $60 bn under "advisement." Just the $8.2 billion attributable to the CDs.)
>
> You will need to address all 3 tiers, not just tier 1 and tier 2.

VI. The Miami Preparation Sessions

18. On or about Tuesday, February 3, 2009, PENDERGEST-HOLT met with SFG Executive B, Attorney A, SIB Affiliate President, CW1, CW2, and

CW3 at the SFG office in Miami, Florida. SIB Affiliate President made a presentation focusing on the regulatory framework for banking in Antigua, and various other topics. None of his presentation involved the holdings of the bank or the value of the investments existing within TIERS I, II, or III. Several discussions also centered on capital contributions from the shareholder.

19. On the morning of Wednesday, February 4, 2009, CW 1 sent an email to SFG Executive B regarding the capital contribution discussions the previous day. In his email, CW 1 wrote:

> I am confused. I was surprised yesterday during our meetings to learn from your comments that SIB' s latest capital contribution [alleged to be $541 million in a SIB December 2008 Monthly Report] and some of SIB's holdings in excess of 2 Billion may be comprised substantially of equity positions in real estate companies which may include the companies that owned the Guiana Island and surrounding properties as well as the Pelican Island in Antigua. As you know, the two holding companies that ultimately owned the Pelican and Guiana Islands properties were acquired directly by Stanford International Bank last year for a consideration of 17.5MM and 68MM respectively.

Thus, according to the email, the $541 million capital contribution set forth in SIB'S December 2008 Monthly Report was made up entirely of assets already owned by SIB entities which had been purchased by SIB in 2008 for approximately $88.5 million.

20. Later that day, PENDERGEST-HOLT met with SFG Executive B, Attorney A, SIB Affiliate President, CW1, CW2, and CW3 at the SFG office in Miami, Florida. PENDERGEST-HOLT made a presentation to the group, focusing on TIER II of the investment portfolio. In PENDERGEST-HOLT's presentation she stated the value of the assets that she managed at that time was approximately $350 million, down from approximately $850 million in June, 2008. While the CW's were very surprised and unnerved by PENDERGEST-HOLT's revelations, they observed that SFG Executive B did not appear surprised by these revelations.

21. PENDERGEST-HOLT also participated in the preparation of a PowerPoint document meant to reflect the entire portfolio of assets in TIER III. Assisting her throughout the preparation process was SFG Executive B. SFG Executive B provided PENDERGEST-HOLT with a thumb drive from which PENDERGEST-HOLT appeared to obtain information to prepare a pie chart depicting the investments in TIER III. The pie chart, prepared and presented by PENDERGEST-HOLT, showed that TIER III contained over $3 billion in real estate, and $1.6 billion labeled as "Loan to Shareholder." Prior to this, CW 2 and CW 3 had not been aware that any TIER III investment funds had been loaned to a shareholder. More significant, however, is that the "shareholder" referred to in the pie chart by the participants was understood to be SFG Executive A. CW 3 described feeling like he "had been kicked" after he saw PENDERGEST-HOLT's presentation on TIER III investments.

22. According to CW 1, CW 2, and CW 3, who were all present at various times while the aforementioned pie chart was being discussed on February 4, 2009, SIB Affiliate President voiced his concerns about the true-nature of the TIER III investments. Specifically, SIB Affiliate President stated that if the pie chart, in fact, represented the assets in TIER III, then SIB would be "insolvent." Indeed, SIB Affiliate President vowed that he would not testify before the SEC, as the information he obtained at the meeting was not the information he disclosed to investors or Antiguan regulators. SFG Executive B, Attorney A, and PENDERGEST-HOLT were present during these discussions.

23. On or about February 5, 2009, another session was held at the SFG office in Miami, Florida. Attending were SFG Executives A and B, SIB Affiliate President, Attorney A, CW1, CW 2 and CW 3. CW2 and CW3 stated to CW 1 and Attorney A that they wanted to report the information learned at the Miami meetings to the SEC. Also present was SFG Executive A, who, after hearing CW2 and CW3's representations, "began pounding the table," stating, "the assets are there."

24. The following day, on Friday, February 6, 2009, PENDERGEST-HOLT, SFG Executives A and B, Attorney A, and CW's 2 and 3, met again at the SFG Miami office. Before the session began, CW2 broke down crying because of the revelations the previous day. CW2 then told the group something to the effect: "if you are going to go through more information I didn't know, I don't want to be there, and I'm going to the authorities." Soon thereafter, Attorney A walked over to CW2 and suggested they begin to pray together. At the end of this meeting,

SFG Executive A stated to the entire group of attendees that "there was at least $850 million more in assets than liabilities" in SFG investments. After the conclusion of several private meetings with SFG Executives throughout the day, Attorney A entered the office of CW3, and in response to her question as to why he was not smiling, Attorney A responded, "The party is over." After returning to the general session in the afternoon with all present, Attorney A announced that SIB Affiliate President would not testify on Monday, and that PENDERGEST-HOLT would testify on Tuesday. CW3 then questioned SFG Executives A and B about their plan of action, given what they knew. SFG Executive A said he would "probably" report to the SEC "on Tuesday."

25. On Sunday, February 8, 2009, Attorney A made several telephone calls to CW1. During one of the telephone calls, Attorney A stated to CW1: "The earnings calculations were not calculated properly; the assets may or may not be there."

26. On Monday, February 9, 2009, one day prior to PENDERGEST-HOLT's scheduled SEC testimony, Attorney A sent an email to CW 1 regarding PENDERGEST-HOLT's pending SEC presentation, which Attorney A admitted he assisted in preparing. Attorney A wrote, "The SEC will also ask for her thumb drive, since she revealed all this information to them." Attorney A also wrote, "[PENDERGEST-HOLT] will also probably be asked lots of questions about (a) all players, (b) SIB ... (c) ROI on marketing materials and how SIB pays those rates, (d) a little about TIER III to the extent she knows much (which she learned a little from [SFG Executive B] in Nov/Dec/ 2008)." In his responsive email, CW1 expressed frustration with the

information in PENDERGEST-HOLT's proposed presentation and stated to Attorney A: "In any event, [PENDERGEST-HOLT's] presentation needs to be complete, accurate and correct. Thus you need to postpone her appearance before the SEC."

VII. Pendergest-Holt's Testimony Before the SEC

27. Pursuant to SEC subpoena, PENDERGEST-HOLT appeared on Tuesday, February 10, 2009, at the Forth Worth, Texas SEC regional office, in the company of Attorney A, who was present throughout the testimony, which was taken under oath.

28. Despite being asked directly whom she met with to prepare for her testimony, PENDERGEST-HOLT failed to reveal to the SEC that she met with SFG Executive A, SFG Executive B, Attorney A, SIB Affiliate President, and the CW's in Miami, Florida one week prior to her testimony. Despite being questioned directly, PENDERGEST-HOLT also never revealed the material information she had gathered and presented during the Miami preparation sessions. When asked, "What did you do to prepare — without telling me about any conversations with [Attorney A] ... What did you do to prepare for your testimony today?" PENDERGEST-HOLT answered, "I have been to Antigua. I have reviewed statements and looked through, gosh, other issues, but mainly reviewed the statements of SIBL in Antigua." Later, the SEC asked, "Who did — without telling me the substance of the conversation, who did you meet with in preparation for your testimony today?" PENDERGEST-HOLT answered, "[Attorney A]." When the SEC asked if PENDERGEST-HOLT met

with "anyone else" in preparation for her testimony, she answered, "In preparation of my part, no." The statements made by PENDERGEST-HOLT set forth above were false.

29. Regarding the SIB investment portfolio structure, PENDERGEST-HOLT testified that SIB's portfolio was managed in three tiers: TIER I was "Cash. Cash and cash in kind investments." TIER II was "a globally diversified portfolio managed by external portfolio advisors," and that the investment parameters for TIER II were set by "the board of directors." According to PENDERGET-HOLT, SFG Executive B told her that the "portfolio advisors had 100% discretion of their portfolios." PENDERGEST-HOLT testified that the value of TIER II was approximately $350 million compared to "just over a billion" at the end of 2007.

30. When questioned directly about the assets in TIER III, PENDERGEST-HOLT failed to reveal to the SEC the extent of her knowledge of the TIER III portfolio. When asked, "And your testimony here today is you don't know what the assets of tier three are?," PENDERGEST-HOLT stated, "That's correct." PENDERGEST-HOLT later testified that she learned from SFG Executive B that the assets of TIER III only included "private equity and real estate." PENDERGEST-HOLT also testified that if she needed information "regarding the assets of tier three as the chief investment officer of Stanford Financial Group," she "would go to the board of directors . . . I would ask [SFG Executives A and B]." At no point did PENDERGEST-HOLT reveal to the SEC that she had learned that TIER III held a "$1.6 billion loan to shareholder," as discussed during the Miami preparation sessions.

31. Later, the SEC asked whether there were any safeguards with respect to the assets in TIER III, whereby PENDERGEST-HOLT stated, "I do not know. I can state it as many ways as you would like me to. I don't know about tier three, other than what I've already shared with you in about 20 different ways."

32. PENDERGEST-HOLT also failed to reveal to the SEC that she was a member of the *Bank*'s investment committee, a position that potentially would have provided her with exposure to TIER III investments. When the SEC asked PENDERGEST-HOLT to "go through all the committees that you've served on as chief investment officer — since becoming chief investment officer," PENDERGEST-HOLT answered, "The Stanford investment committee." When the SEC asked whether PENDERGEST-HOLT served on "the Stanford International Bank limited investment committee," she answered, "On the investment committee, no." This statement is false. Indeed, in addition to being present at the Board of Directors meeting when she was named to the Bank's investment committee, PENDERGEST-HOLT was introduced by SIB Affiliate President as "our global chief investment officer, and also part of the bank's investment committee" at a SIB Top Producers Club meeting in Miami, Florida on January 10, 2009.

33. When the SEC asked, "Okay. Does Stanford International Bank do any loans?," PENDERGEST-HOLT answered, "Yes." In describing the extent of her knowledge of SIB loans, PENDERGEST-HOLT testified, "I'm sorry. I don't know the details of

loans." The SEC asked whether PENDERGEST-HOLT knew "whether or not the loans are secured by certificates of deposit," and she answered, "I do believe they are cash collateralized loans, yes." Again, PENDERGEST-HOLT failed to reveal to the SEC her knowledge depicted in the PowerPoint pie chart she prepared at the Miami preparation sessions evidencing the "$1.6 billion Loan to Shareholder." Nor did she reveal that she had in her possession at the Miami preparation sessions a thumb drive which contained this very information.

34. PENDERGEST-HOLT was shown the December, 2008 SIB Monthly Report discussing the "$541 Million" contribution, and asked where the "$541,000,000 c[a]me from?" PENDERGEST-HOLT testified, "I would have to use an assumed word. I would assume by the shareholder ... [SFG Executive A]... Shareholder infusion or shareholder capital infusion. It's not there, but that would be my assumption." PENDERGEST-HOLT failed to reveal that during the Miami preparation sessions she learned and understood that the $541,000,000 came from equity positions in real estate.

35. When the SEC asked whether PENDERGEST-HOLT knew "what the allocations are in tier three," PENDERGEST-HOLT answered, "I do not know what the allocations are in tier three." Finally, the SEC asked, "Does [SIB Affiliate President] know what the assets are in tier three?," PENDERGEST-HOLT stated, "I do not know." When the SEC asked, "Have you ever discussed with [SIB Affiliate President] anything other than tier two?," PENDERGESTHOLT replied, "No. In specifics, no." These statement are also false, as PENDERGEST-HOLT was present at the Miami

preparation sessions when SIB Affiliate President discussed with her and others, in detail, the problems extant in TIER III.

36. On February 17, 2009, the SEC interviewed PENDERGEST-HOLT in Memphis, Tennessee. During PENDERGEST-HOLT's interview, the SEC staff asked again whether she had any knowledge of the assets in TIER III. Once again, PENDERGEST-HOLT continued to obstruct the SEC investigation by saying, "If I knew anything about TIER III, I'd tell you . . . God's honest truth," even though she was aware of such information through her participation in the Miami preparation sessions.

On the basis of the foregoing, it is my belief that **LAURA PENDERGEST-HOLT**, did obstruct a proceeding before an agency of the United States, that is, the Securities and Exchange Commission, in violation of Title 18 United States Code, Section 1505.

/s/ Vanessa G. Walther

VANESSA G. WALTHER,
SPECIAL AGENT - FBI

Sworn to before me and subscribed in my presence this 25 day of February 2009.

/s/ Wm. F. Sanderson Jr.
Wm. F. SANDERSON, JR.

UNITED STATES
MAGISTRATE JUDGE

EXHIBIT 4

PROSKAUER ROSE LLP

Fax Transmittal

Date February 12, 2009	**Client-Matter**	66955.001

Total Pages (including cover) 2

From Thomas V. Sjoblom

Sender's Voice Number	202.416.5805
Sender's Room Number	DC-412
Sender's Email Address	tsjoblom@proskauer.com
To: J. Kevin Edmundson	**Main Fax No.:** 202.416.6899 **Fax No.:** 817.978.2700
Company: U.S. Securities and Exchange Commission	

Message

CONFIDENTIAL

PROSKAUER ROSE LLP

February 12, 2009

VIA PDF & FIRST-CLASS MAIL

J. Kevin Edmundson, Esq.
Assistant Regional Director
United States Securities and Exchange Commission
Fort Worth District Office
801 Cherry Street, Suite 1900
Fort Worth, TX 76102

Re: In re: Stanford Group Company (FW-2973)
Withdrawal of Representation

Dear Kevin:

This will confirm the notice I provided to Mr. Steve Korotash last evening, February 11, 2009, that Proskauer Rose, LLP has withdrawn as counsel to Stanford Financial Group and its affiliated companies in all enforcement and other regulatory matters before the United States Securities and Exchange Commission.

Sincerely,

/s/ Thomas V. Sjoblom
Thomas V. Sjoblom

Edmundson, J. Kevin

From: Sjoblom, Thomas V.
Sent: Saturday, February 14, 2009 4:10 PM
To: Edmundson, J. Kevin
Subject: Re: Stanford

Kevin, this will advise the SEC and confirm my voice message last evening, that I disaffirm all prior oral and written representations made by me and my associates while at Chadborne & Parke and while at Proskauer Rose to the SEC staff regarding Stanford Financial Group and its affiliates.

Sent from Blackberry Wireless Handheld

From: Edmundson, J. Kevin
To: Sjoblom, Thomas V.
Sent: Sat Feb 14, 15:38:03 2009
Subject: Stanford

Got your vm. Try to reach me at [phone number redacted].

APPENDIX L

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAMUEL TROICE,	§	
MARTHA DIAZ,	§	
PAULA GILLY-	§	
FLORES,	§	
PUNGA PUNGA	§	
FINANCIAL, LTD.,	§	
MANUEL CANABAL,	§	**CIVIL ACTION NO.**
DANIEL GOMEZ	§	**3:09-cv-01274-L**
FERREIRO, and	§	
PROMOTORA VILLA	§	
MARINO, C.A.	§	
individually and on	§	
behalf of a class	§	
of all others similarly	§	
situated	§	
	§	
VS.	§	
	§	
WILLIS OF	§	
COLORADO, INC.,	§	
WILLIS LTD.,	§	
WILLIS GROUP	§	
HOLDINGS LTD.,	§	
AMY S. BARANOUCKY,	§	
ROBERT S. WINTER,	§	
and	§	
BOWEN, MICLETTE &	§	
BRITT, INC.	§	
Defendants.	§	

PLAINTIFFS' THIRD AMENDED CLASS ACTION COMPLAINT

NOW COME PLAINTIFFS, SAMUEL TROICE, MARTHA DIAZ, PAULA GILLY- FLORES, PUNGA PUNGA FINANCIAL, LTD., MANUEL CANABAL, DANIEL GOMEZ FERREIRO and PROMOTORA VILLA MARINO, C.A., individually and on behalf of a class of all others similarly situated, (collectively hereinafter "Plaintiffs"), and file this their Third Amended Class Action Complaint against Defendants, WILLIS OF COLORADO INC., WILLIS LTD., WILLIS GROUP HOLDINGS, LTD., AMY S. BARANOUCKY, ROBERT S. WINTER, and BOWEN, MICLETTE & BRITT, INC. (collectively hereinafter "Defendants"), and in support thereof would show the Court the following:

I. PREFACE

1. This putative class action is filed in representation of a class of defrauded investor clients of Houston, Texas-based Stanford Financial Group ("Stanford Financial"). This action has been filed in this Court because it is related to Civil Action No. 309-CV-0298, *Securities & Exchange Commission v. Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management LLC, et al.*, in the United States District Court for the Northern District of Texas– Dallas Division (the "SEC Action"). This action alleges participation by these Defendants in the massive investment fraud scheme perpetrated by the Stanford Financial Group and its principals from, by and through Texas that led to the intervention by the SEC in Texas and appointment of Ralph Janvey as Receiver.

II. PARTIES

2. Plaintiff, SAMUEL TROICE, is a citizen of the Republic of Mexico residing in the Republic of Mexico.

3. Plaintiff, MARTHA DIAZ, is a citizen of the Republic of Mexico residing in the Republic of Mexico.

4. Plaintiff, PAULA GILLY-FLORES, is a citizen of the Republic of Mexico residing in the Republic of Mexico.

5. Plaintiff, PUNGA PUNGA FINANCIAL, LTD., is a Panamanian company with its principal place of business in Mexico City, Mexico which is wholly owned and controlled by Mexican citizens from Mexico City, Mexico.

6. Plaintiff, MANUEL CANABAL, is a citizen of the Venezuela residing in the Venezuela.

7. Plaintiff, DANIEL GOMEZ FERREIRO, is a citizen of the Venezuela residing in the Venezuela.

8. Plaintiff, PROMOTORA VILLA MARINO, C.A., is a Venezuelan company with its principal place of business in Venezuela which is wholly owned and controlled by Venezuelan citizens.

9. Additionally, this case seeks certification of a class of all investors who had purchased and still held Certificates of Deposit and/or otherwise maintained deposit accounts with Stanford International Bank Ltd. as of February 2009, and, in the alternative, seeks certification of (i) a class of all Latin American investors who had purchased and still held Certificates of Deposit and/or otherwise maintained deposit accounts with Stanford

International Bank Ltd. as of February 2009; and, in the further alternative, (ii)separate classes of Venezuelan and Mexican investors who had purchased and still held Certificates of Deposit and/or otherwise maintained deposit accounts with Stanford International Bank Ltd. as of February 2009; and, in the further alternative, (iii) a class of all investors who had purchased and still held Certificates of Deposit and/or otherwise maintained deposit accounts with Stanford International Bank Ltd. as of February 2009, and who had received or were shown copies of the insurance letters issued by Defendants as described herein.

10. Defendant Willis of Colorado Inc., ("Willis Colorado") is a corporation organized under the laws of Colorado. Willis has engaged in business in the State of Texas, and maintains a designated agent for service of process in Texas. Willis Colorado has been served with process and has filed responsive pleadings in this action.

11. Defendant Willis Ltd. ("Willis London") is a corporation organized under the laws of the United Kingdom, with its principal place of business in the United Kingdom. Willis London has engaged in business in the State of Texas, but does not maintain a regular place of business or a designated agent for service of process in Texas. Willis London may be served via the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 1965 U.S.T. 361, 658 U.N.T.S. 163 (1965). Willis London may be served at its home office address in London: 51 Lime Street, London EC3M 7DQ, England.

12. Defendant Willis Group Holdings Ltd., ("Willis Group") is a corporation organized under the laws of Bermuda, with its principal place of business in the United Kingdom. Willis Group has engaged in business in the State of Texas, but does not maintain a regular place of business or a designated agent for service of process in Texas. Willis Group has been served with process and has filed responsive pleadings in this action.

13. Defendant, Amy S. Baranoucky, ("Baranoucky") is an individual and, upon information and belief, United States citizen, currently residing in Bermuda. Defendant Baranoucky has been served with process and has filed responsive pleadings in this action.

14. Defendant, Robert S. Winter, ("Winter") is an individual and, upon information and belief, United States citizen, currently residing in 10015 Olympia, Houston Texas 77042. Defendant Winter has been served with process and has filed responsive pleadings in this action.

15. Defendant Bowen, Miclette & Britt, Inc. ("BMB") is a corporation organized under the laws of Texas. BMB has been served with process and has filed responsive pleadings in this action.

III. SUBJECT MATTER JURISDICTION

16. This Court has original jurisdiction over this proceeding pursuant to 28 U.S.C. §1332(d)(2)(B) because this is a class action in which the amount in controversy exceeds $5,000,000.00 and is a class in which some members of the Plaintiff class are citizens and residents of Mexico and Venezuela and at least one Defendant (BMB) is a citizen of Texas. Furthermore, pursuant to ¶9 of the Amended Order

Appointing Receiver in the SEC Action, this lawsuit constitutes a judicial proceeding against certain agents "related to the Receivership Estate".

IV. PERSONAL JURISDICTION

17. This Court has personal jurisdiction over the non-resident Defendants, Willis Colorado, Willis London, Willis Group, and Baranoucky, under the Texas Long Arm Statute. Defendant Willis Colorado has conducted continuous and systematic business in the State of Texas for many years and maintains a registered agent for service of process in Texas for that reason, and is therefore subject to general jurisdiction. Defendant Baranoucky has been registered as an insurance broker with the Texas State Board of Insurance for many years, and still retains said registration. Defendant Willis Group has conducted continuous and systematic business in the State of Texas, both directly and via its subsidiaries, affiliates, and agents (including Willis Colorado and Baranoucky), for many years and therefore is subject to general jurisdiction. To wit, Willis Group has, since at least 2005 (if not before), maintained offices and employees in Austin and Houston, Texas under the direction and control of Willis Group employee Tom Patrick. See February 14, 2005 Willis Group Press Release, attached hereto as Exhibit "6". Moreover, in 2008 Willis Group consummated a merger with U.S. insurance brokerage company Hilb Rogal & Hobbs ("HRH"), which Willis Group announced would double Willis Group's North American revenues and substantially improve Willis Group's position in important areas in North America including, *inter alia*, the State of Texas. Through said merger, Willis acquired offices

in Houston, Dallas, San Antonio, Amarillo and McAllen, Texas.

18. Furthermore, Willis Group, either directly or through its subsidiaries, affiliates and agents, including Willis London, Willis Colorado and Baranoucky, has engaged in specific jurisdiction contacts with the State of Texas, specifically with the Stanford Financial group headquartered in Houston, Texas, that give rise to Plaintiffs' causes of action, and therefore has done business and committed torts, in part, in the State of Texas. Since at least 2005, if not before, Willis Group, directly and through Willis London, Willis Colorado and Baranoucky, served as the insurance broker and risk manager for the Stanford Financial group headquartered in Houston, Texas, and in that capacity engaged in extensive, almost daily, contacts with Stanford Financial personnel based in Houston, Texas to service said Texas-based client for over 4 years. In conjunction with the provision of its professional insurance brokerage services to Stanford Financial, upon information and belief, Willis Group, acting through Willis London and Baranoucky, performed underwriting services on the entire Stanford Financial group and obtained and secured certain Lloyd's of London insurance policies for Stanford Financial, all of which involved multiple trips to Houston, Texas by Willis employees and almost daily e-mail and telephone contact for over 4 years. As part of the provision of such services to its client, Willis Group, acting through Willis London, also authorized and approved the issuance of the "safety and soundness" letters by its subsidiary and agents Willis Colorado and Baranoucky at issue in the instant lawsuit, which letters Willis Group knew

were issued and delivered to Stanford Financial in Houston, Texas. Based on its general and specific contacts with the State of Texas, Defendant Willis Group acting as and through Willis London, Willis Colorado and Baranoucky, has purposefully availed itself of the privilege of conducting activities within Texas and has established minimum contacts with the State of Texas under the Long Arm Statute.

19. Defendants Willis London, Willis Colorado and Baranoucky have engaged in specific jurisdiction contacts with the State of Texas, specifically with the Stanford Financial group headquartered in Houston, Texas, including the transmittal to Houston, Texas of the "safety and soundness" letters described herein and attached hereto as Exhibit "4", that give rise to Plaintiffs' causes of action, and therefore said Defendants have done business and committed torts, in part, in the State of Texas. Based on their specific contacts with the State of Texas, Defendants Willis London, Willis Colorado and Baranoucky have purposefully availed themselves of the privilege of conducting activities within Texas and have established minimum contacts with the State of Texas under the Long Arm Statute.

V. VENUE

20. Venue is mandatory in this Court pursuant to ¶9 of the Amended Order Appointing Receiver in the SEC Action.

VI. FACTUAL BACKGROUND

A. The Stanford Financial Empire

21. From the mid-1980s through February 2009, R. Allen Stanford ("Stanford"), a former gym owner

from Mexia Texas, built a financial service empire that at its height boasted 30,000 customers in 130 countries managing billions of dollars in investment funds. The empire was comprised of over 140 companies from across the globe, all of which were ultimately owned by Stanford himself, that operated under the brand name "Stanford Financial" with its worldwide headquarters located in Houston, Texas. The conglomeration of Stanford companies (hereinafter collectively referred to as "Stanford Financial") included the main operating companies: Houston, Texas-based Stanford Group Company ("SGC"); Stanford International Bank ("SIB"); and Stanford Trust (one in Louisiana and another in Antigua), all of which were controlled and managed from the United States, principally Houston, Texas. In Mexico, Stanford Financial operated under the names Stanford Group Mexico S.A. and Stanford Fondos S.A. de C.V., while in Venezuela Stanford Financial operated under the names Stanford Group Venezuela, C.A. and Stanford Group Venezuela Asesores de Inversion, C.A. Both of those foreign companies were also controlled and managed from the United States, principally Houston, Texas.

22. Begun initially as an offshore banking operation in the mid-1980s, Stanford Financial grew over the years into a full service financial services group, offering clients private banking and U.S.-based broker dealer services worldwide from its headquarters base in Houston, Texas. Stanford Financial gave all the appearances of a highly successful outfit, with lavish offices in some of the world's premier cities. Stanford himself made the Forbes' list of the richest people in the world with a personal fortune estimated at $2.2 billion.

23. The most important facet underlying Stanford Financial, and the key to its success and sustainability, was the carefully crafted Stanford Financial image. The Stanford Financial image, cultivated over the years, was one of success, prestige, and, most importantly, safety and solidity. The Stanford Financial image was centered around and built upon money – the money Stanford Financial received from its investor clientele. With the money it received from its clients, Stanford Financial was able to project an image of success and solidity. From the marble and mahogany of the Houston headquarters, to the huge bonuses paid to lure and retain top producers, to the $500 lunches for clients in Mexico City, to the helicopters and private jets that flew the Stanford Financial executives around, Stanford Financial oozed money, thus lending an air of legitimacy to the Stanford "myth".

24. Part of the Stanford legend was that Stanford Financial was a continuation of the insurance business begun by Stanford's grandfather, Lodis Stanford, during the Great Depression. Based on that connection, Stanford Financial boasted to the world that it had over 70 years history of growing and protecting people's wealth. This legend, like most of the Stanford image,[1] was false, as Stanford's father sold the old insurance business in 1983. Yet Stanford continued to foster that image of decades of

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[1] Stanford's claim to be a descendent of the founder of Stanford University, a claim which he disseminated widely, was also false.

family tradition and work ethic as late as a 2008 edition of the *Stanford Eagle* magazine.

25. Charitable giving and sponsorships of sporting events and teams, as well as massive political contributions, constituted additional pillars supporting the Stanford Financial image. As with everything else, Stanford spent lavishly on philanthropic endeavors, giving to hospitals, theaters and museums, and sponsoring sports teams and celebrities such as the Miami Heat and Vijay Singh, all with the objective, once again, of sustaining the Stanford Financial image. Stanford made a huge splash in the world cricket establishment in particular. Stanford also gave generously to political campaigns and urged his employees to do the same as well, to the tune of millions of dollars.

26. Stanford Financial obtained the money it needed to perpetuate its image from one primary source: the sale of Certificates of Deposit ("CDs") from the Antiguan offshore bank wholly owned and controlled by Stanford himself – SIB. Clients who were introduced to the Stanford Financial group quickly found out that the main financial product being peddled by the group was the SIB CD. The SIB CDs were sold worldwide by a web of different Stanford Financial promoter companies whose sole function was the sale of the SIB CDs. By 2009, SIB had sold over $7.2 billion in CDs. The vast majority of these CDs were sold to investors in Latin America, including roughly $3 billion sold in Mexico and Venezuela alone.

B. Stanford Financial's Operations in Mexico and Venezuela

27. Stanford Financial opened its first company in Mexico, Stanford Group Mexico, S.A. de C.V. ("Stanford Mexico"), in January 1995. Stanford Mexico was a direct subsidiary of SGC in Houston and indirectly owned by Allen Stanford. The Venezuelan subsidiaries of Stanford Financial (hereinafter "Stanford Venezuela") were also indirectly owned by Allen Stanford. Stanford Mexico and Stanford Venezuela were set up specifically to serve as unregistered "representative offices" of Stanford Financial in their respective countries with one primary purpose: to sell SIB CDs to Mexican and Venezuelan citizens in violation of the laws of the respective countries. Stanford Financial's Mexico and Venezuelan operations grew rapidly by "head hunting" bankers and other financial advisers and their books of client business from other banks and trust companies. Stanford Mexico eventually opened branch offices in Monterrey and Puebla, Mexico. All of the financial advisers ("FAs") in the Stanford Mexico and Stanford Venezuela offices had one primary mission --- to sell SIB CDs for Stanford Financial. Like their counterparts in the United States, Stanford's Mexican and Venezuelan FAs were paid outsized commissions for the sale of the CDs.

28. David Nanes served as a senior executive and employee of Houston-based Stanford Group Company from 1997 through 2009 during the same time period that he served as President of Stanford Mexico. Upon information and belief, Nanes consistently drew his Stanford Financial/Stanford

Mexico salary from SGC or one of the other U.S.-based Stanford entities from 1995 through 2009.

29. Since Houston was the administrative nerve center and principal base for the Stanford Financial/SIB worldwide sales force, all of the sales practices of Stanford Mexico and Stanford Venezuela were managed under the overall direction, supervision, and control of the Houston offices of Stanford Financial. In fact, all of the foreign FAs for Stanford Financial, including all of the members of the sales forces of Stanford Mexico and Stanford Venezuela, were required to sign employment contracts with their Stanford Financial employers in their home countries that called for Texas law to apply. And the Stanford Financial foreign FAs, including those in Mexico and Venezuela, were also required to sign "Foreign Associate Service Agreements" with SGC, which also called for the application of Texas law.

30. From at least 1995 (if not before) through 2009, all of the sales practices, directives, techniques, strategies and reward programs for Stanford Financial were developed and crafted in Houston and disseminated down to Mexico and Venezuela to be implemented there. All of the sales force training manuals, promotional literature and marketing materials for SIB, including the Spanish-language promotional materials, were created, printed, packaged and mailed from Stanford's Houston headquarters to Stanford Mexico in Mexico City and Stanford Venezuela in Caracas, to be utilized by the local FAs under the overall supervision of Stanford Financial executives in the United States. In addition, mandatory sales training for the Mexican and Venezuelan FAs was

conducted principally in Houston (known to the Latin American financial advisers as the "Houston experience") by Stanford Financial personnel like Oreste Tonarelli, Monica Manzanares and David Charner. In those mandatory training sessions, sometimes twice a year, the Latin American FAs were trained to sell the Stanford Financial image. The Stanford Financial "script" for why SIB was a safe and secure place to invest money, as set forth in the training manuals and reinforced "live" in Houston, was drilled and drilled again into their heads. The FAs were thereafter subjected to examinations to reinforce the script and sent back to their home countries to aggressively sell the SIB CDs.

31. Nanes managed all aspects of the operations of Stanford Mexico and reported directly to Allen Stanford. Under his direction, the financial advisers were charged with "captacion", which is a Spanish term for essentially "capturing" investment funds, for Stanford Financial. The act of "captacion" for a foreign, offshore investment company or bank that is not properly registered in Mexico is illegal under Mexican law. Under information and belief, it is also illegal under Venezuelan law. Stanford Financial did everything in its power to disguise and otherwise hide the illegal nature of Stanford Mexico's operations, including sales of SIB CDs by Stanford Fondos (created in 2005 to cater to the Mexican national market), which was specifically established to lend "cover" and an air of legitimacy to Stanford Mexico's operations and allow the Stanford Financial sales agents in Mexico to continue to sell the SIB CDs.

32. For the first decade of its existence, one of the principal ways that Stanford Mexico got investment funds from Mexican investors out of Mexico was via private flights on Stanford- owned or chartered airplanes out of the Toluca, Mexico airport. About once every month, Nanes and his team bundled large amounts (millions of dollars) of checks and cash from new Mexican investors, including checks drawn on U.S. bank accounts, and loaded them in briefcases to fly the money out of the Toluca airport to Houston or Antigua.[2] This procedure violated Mexican law. In 2005 Stanford Mexico's human resources director, Veronica Spindola, was detained at the Toluca airport carrying some $5 million in checks bound for SIB. After spending 90 days in detention, she was given an award for excellence in 2006 by Stanford Financial.[3]

33. The other way Stanford Financial sold CDs in Mexico and Venezuela, also entirely illegal under the laws of the respective countries, was through SGC brokers from Houston or Miami, and through unlicensed sales agents operating from offices in Houston, San Antonio and Miami under the name "Stanford Fiduciary Investor Services" (hereinafter "SFIS"), which upon information and belief was a "d/b/a" of Stanford Trust Ltd., the Antiguan trust company. On a regular basis, SGC brokers and unregistered SFIS sales agents from Houston, San Antonio and/or Miami traveled to Mexico City, Caracas and other Mexican and Venezuelan cities to solicit and sell SIB CDs and "captar" investments

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[2] Gabriel Bauducco. *Imperio de Papel*, at 98 (2009).

[3] *Id.*, at 115.

funds from Mexican and Venezuelan citizens for Stanford Financial. SGC brokers and unlicensed SFIS sales agents regularly flew to Mexico City and set themselves up in posh hotels, such as the Hotel Intercontinental in Polanco, and met with their Mexican clients to market and sell the SIB CDs, also in absolute violation of Mexican law. The SGC brokers and SFIS sales agents also regularly sold CDs to foreign, including Mexican, investors directly out of the SGC Houston office, and also sold CDs to foreign, primarily Mexican investors, out of the SFIS offices in Houston and San Antonio, Texas. SGC brokers and SFIS agents did the same thing for Venezuelan clients: selling the CDs to Venezuelan investors through the SGC or SFIS offices in Miami and other cities in Florida.

34. As part of the Stanford Financial sales process, investors like Plaintiffs were uniformly "sold" the Stanford Financial "image". From at least 1995 (if not before) through 2009, investors like Plaintiffs were uniformly informed by the Stanford Financial FAs, as well as via the Stanford Financial marketing materials created in and disseminated from Houston, Texas, that, inter alia, investments in the SIB CDs were safe and sound because SIB was part of the Stanford Financial group based in Houston, Texas and therefore subject to regulation by the United States government. Indeed many Mexican and Venezuelan investors to this day never understood that they had invested in CDs issued by an Antiguan bank, but always thought their money was invested in Houston, Texas. Investors like Plaintiffs were also uniformly told by Stanford Financial FAs, both verbally and in writing via the Stanford Financial marketing materials created in

and disseminated from Houston, Texas, that the CDs issued by SIB were safer even than U.S. bank–issued CDs because Stanford Financial had unique Lloyds of London insurance policies in place that went above and beyond FDIC insurance; and that investments in the CDs were liquid and the CDs could be redeemed at any time because SIB, through Stanford Financial, invested the money in safe, secure and liquid assets. These exact, uniform sales representations are contained almost verbatim in the Stanford Financial Training Manuals and in the Stanford Financial sales and marketing materials regularly and uniformly distributed to the investors between 1995 and 2009.

C. Perpetuation of the Stanford Image – the Root of the Fraud

35. What attracted investors to Stanford Financial was the expertly crafted perception that Stanford Financial (including SIB) was (1) a United States-based operation subject to regulated by the U.S. Government; and (2) that SIB carried multiple insurance policies designed to ensure that investments in SIB CDs were safer and more secure than investments in CDs issued by U.S. banks insured by the FDIC. Indeed, Stanford Financial developed internal policies company-wide for its sales staff to use SIB's insurance policies as marketing tools and to "spin" the existence of insurance policies covering certain aspects of SIB's business to make it appear as if SIB held depositor insurance.

1. The Stanford Pitch: "United States Operation"

36. All of the Stanford Financial FAs were trained to "blur the lines" that separated SIB from the U.S. operations of Stanford Financial and to sell the image and perception that SIB was part and parcel of the Stanford Financial "group" based in Houston, Texas and regulated by the United States Government. All of the Stanford Financial FAs, whether from SGC or from the Stanford Financial offices in Mexico and Venezuela, were also trained to push and emphasize to Plaintiffs and the Class that their investments in Stanford Financial/SIB were insured by Lloyd's of London and/or other prominent insurers and were therefore safer than deposits in U.S. banks. Indeed, this latter representation was contained almost verbatim in the Stanford Financial Training Manuals.

37. These representations were repeated in the promotional materials for Stanford Financial and SIB that were designed and generated in Houston and then handed to SGC advisers headed for sales presentations in Mexico and Venezuela or forwarded to Stanford Financial's offices in Mexico City and Caracas for distribution directly to clients in those countries. SIB itself never had a sales force or marketing or promotional arm in Antigua. The head of the global sales force for SIB was located in the United States, principally in Houston, Texas. See, e.g., June 12, 1996 letter from Stanford Financial vice president Rossana Roys, attached hereto along with certified English translation as Exhibit "1" and made a part hereof for all purposes (describing to a potential Monterrey, Mexico investor that Stanford Financial handles all of the promotional activities for

SIB from its "purely American" base in Houston, Texas). Therefore all of the sales, marketing and promotional activities for Stanford Financial for the sale of the SIB CDs occurred in Texas from at least 1995 through 2009.

38. The sales and promotional materials created in Texas and distributed uniformly throughout the world intentionally blurred the lines between Antigua-based SIB and the other U.S.- based Stanford Financial entities, including SGC, and intentionally created the false impression that SIB and Stanford Financial (including SGC) were one and the same and therefore that SIB enjoyed the same regulation and protections as a U.S.-regulated company. As the U.S. Receiver has stated, "Stanford's financial advisors used the apparent legitimacy offered by U.S. regulation of Stanford's U.S. brokerage subsidiary in order to generate sales of SIBL CDs worldwide."[4]

2. Stanford Financial's Use of Insurance as a Marketing Tool

39. Stanford Financial purchased and used insurance policies as marketing tools to sell the SIB CDs. Indeed, Stanford Financial purchased many insurance policies, and paid millions of dollars in annual premiums (by 2007 Stanford Financial was paying out $17 million in premiums per year for its insurance program), not because the insurance was necessary, but because it assisted sales production, i.e., assisted the FAs to sell SIB CDs, particularly in Latin America. Since the CDs were issued by an

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[4] "Report of the Receiver Dated April 23, 2009" in the SEC Action [docket #336], at 7.

offshore private bank and obviously did not enjoy FDIC protection, Stanford determined in the early or mid-1990s that private insurance coverage on SIB could be used to create the illusion that the SIB CDs were insured. As Professor Joseph Long has noted in his treatise on state securities laws published by West, private banks that offer CDs without FDIC insurance face a marketing dilemma:

> These banks and other financial institutions are forced to compete in the market place for the investor's dollar and generally suffer a competitive disadvantage from this lack of government sponsored or mandated insurance. In an effort to improve their image of solvency, stability, and generally respectability, and to gain investor acceptance in the eyes of the general public, it is not unforeseen that some of these companies may, in the future, offer CDs and other types of interests which are insured against loss through private insurance companies or consortiums or some sort of co-operative insurance arrangement.

40. See Joseph C. Long, BLUE SKY LAW §2:28 (West 2003). Professor Long goes on to emphasize the risks to the investor inherent in the marketing of insurance for such "private bank" CDs:

> The investor ought not be required to attempt to evaluate the true worth of any offered insurance coverage in an informational vacuum. To properly evaluate the effect of this insurance upon his risk of loss, the investor needs information about the terms and extent of the insurance coverage as well as information about the strength and solvency of

> the insurance company providing it. This is the type of information that can and should be provided through the normal securities registration process.

41. *Id.* Of course, since Stanford Financial never registered the CDs as securities in the United States or in Texas, the only information available to the investors concerning the insurance coverage for SIB was the information that was ultimately provided by Stanford through Defendants.

42. An example of how Stanford purchased and used insurance policies as a marketing tool, and how Stanford routinely informed its insurance brokers of this marketing strategy, is demonstrated by Stanford's 2006 decision to purchase Excess SIPC coverage for SGC's brokerage operations. In September 2006, Barbara Fortin, a former BMB employee who in January 2003 became head of Stanford's insurance program, wrote to Roddy Graham, who worked in conjunction with BMB as a broker to procure various lines of insurance for Stanford in the London market, and informed him that Stanford was looking to purchase Excess SIPC insurance to use as "a marketing tool". Later, in Mr. October 2006 and as part of her efforts to get the Stanford Insurance Committee to approve the purchase of Excess SIPC coverage, Fortin wrote to CFO Jim Davis (who chaired the insurance committee) to advise him that various other broker/dealer firms had procured Excess SIPC coverage and that Stanford's prospects and clients had noticed this and asked if Stanford also carried the insurance. Another member of the Stanford Insurance Committee (and former head of SGC), AJ Rincon, e-mailed Fortin and Davis that "*our*

competitors are getting a lot of great bragging rights from having purchased this product, catering to the fear of the investors. They are also capitalizing on the piggy back on the Llyods name. " Later, Fortin e-mailed Allen Stanford and Jim Davis regarding Excess SIPC coverage and noted that even AJ Rincon had approved it, and that Rincon "*would not vote to purchase ANY insurance that wasn't absolutely needed to increase production*".

43. In 2004, Stanford Financial also increased the limits on its Blanket Bond coverage specifically to attract a new group on high net worth investors from Memphis. This marketing necessity was communicated to BMB broker Richard Lee in May 2004, who sent an e-mail to Barbara Fortin and Gil Lopez providing an update on pricing for the increase in insurance limits and noted that he thought the information was urgent "*since Stanford needed this coverage to finalize the signing up of some new clients to the High Net Worth Team in Memphis.*"

44. Stanford Financial routinely touted the insurance policies covering SIB in its marketing materials. A true and correct sample of one of the sales and promotional materials used in Mexico and Venezuela from roughly 1995 through 2009, along with certified English translation, is attached hereto as **Exhibit "2"**. This promotional piece distributed in Mexico and Venezuela falsely states that investments in SIB were more secure than investments in FDIC-insured U.S. banks. *Id.* The promotional materials described various "unique" insurance policies from Lloyd's that insured the clients' investments in SIB. *Id.* These and other promotional materials routinely utilized by Stanford

Financial and uniformly distributed to its client base, including Plaintiffs and the Class, uniformly omitted to disclose the amounts of the coverage afforded by the referenced insurance policies, thereby intentionally creating the impression that the insurance policies provided coverage for all investments in SIB, which was false. *Id.*

45. The promotional materials go on to describe how, in order to qualify for the insurance policies, SIB was audited annually by Lloyds, and was also subjected to annual risk analyses, which "*provides another safety element for the clients.*" Id.

46. In another Spanish language promotional piece circulated in Mexico and Venezuela from roughly 1995 through 2009, Stanford Financial described how, "*in order to guarantee and provide higher security to its clients*", SIB had a special insurance policy that covered SIB's financial transactions "*in case of loss, fraud or theft*". A true and correct sample of said promotional piece used in Mexico and Venezuela is attached hereto as **Exhibit "3"**. It goes on to say that *"[t]his policy is extremely hard to acquire and few banks are able to satisfy the requirements to obtain it." Id.* It then lists Defendant BMB as the "administrator" of the insurance policies for SIB. Id.

47. The Spanish-language promotional materials also intentionally blurred the lines between SIB and SGC in order to create the impression in the minds of the average investor that SIB was insured by SIPC. See Exhibit "2". The promotional literature belittles the protections afforded by the FDIC, and then clearly and unambiguously suggests that SIB was guaranteed and insured by the NASD and SIPC,

going so far as to state in bold letters that "*Stanford International Bank is probably the only International Bank that offers this type of security to its clients*". *Id.*

48. The attached Spanish-language promotional materials, and other similar materials, were created by the Stanford Financial marketing team in Houston, Texas and then approved and authorized for distribution in Mexico and Venezuela and for use by Stanford Financial FAs in the sale of SIB CDs in those and other countries.

49. Stanford Financial's FAs and promotional materials were not enough, however. To complete the fraudulent sales pitch, particularly regarding the safety and soundness of an investment in SIB, Allen Stanford needed "back up". He got it from Stanford Financial's insurance brokers, who agreed to participate in a fraudulent and misleading insurance letter distribution campaign that was designed to assist Stanford to market SIB to actual and prospective purchasers of the SIB CDs.

D. Defendants' Participation in Stanford's Fraud: The Insurance Endorsement Letters

50. Defendants became willing participants in Stanford's fraudulent use of insurance to market and peddle the worthless CDs. Defendant Winter was the "Insurance Specialist" for all of Stanford Financial and also a member of the Board of Directors for SIB, for which he received a $30,000 a year salary. The other Defendants acted as the risk managers and insurance brokers for the Stanford Financial group, rendering professional services to Stanford Financial over the years as insurance agents, brokers, risk managers and/or insurance consultants. From the

early 1990s all the way until Stanford's collapse in 2009, Defendants performed insurance assessments on virtually every aspect of Stanford Financial's business operations around the world, from its banking and brokerage business; Caribbean airlines; Antiguan newspaper publishing business; and Stanford's Caribbean real estate development projects, and in that capacity Defendants gained extensive knowledge of Stanford's global operations. Indeed, perhaps no other third party had as much knowledge of Stanford Financial's worldwide operations as BMB and Willis, precisely because it was their job, as insurance and risk managers, to have a thorough understanding of Stanford Financial's operations. As a result of the provision of these professional insurance services, both BMB and (at least as of 2005) Willis Group were regularly listed in Stanford Annual Reports as the Stanford Financial group's "Insurance and Risk Managers". In serving in such professional capacity, both BMB and Willis engaged in regular and systematic, indeed almost daily, contacts with Stanford Financial personnel in Houston, Texas.

51. As part of the rendering of professional services as the Insurance and Risk Managers for Stanford Financial, BMB and then Willis annually provided Stanford Financial in Houston with certain insurance endorsement letters for SIB - describing insurance policies for SIB, touting SIB's credentials and otherwise endorsing SIB with the clear intention that said letters be used by Stanford Financial for marketing purposes to retain or obtain actual and prospective clients for SIB. Willis in particular, put its internationally known and respected brand name behind Stanford Financial

and SIB, thereby lending recognition and credibility to Stanford Financial and SIB and supporting its sales efforts.

52. Most incredibly, Defendants prepared and sent these endorsement letters, the text of which was actually written by Stanford employees, year after year with the addressee of the letters and the date of the letters left **in blank**, to be filled in later by Stanford Financial employees, as part of a fraudulent scheme to make investors believe that the letters were being sent by Defendants in a personalized manner directly to the individual investors. Defendants even provided Stanford with Defendant's own letterhead envelopes, so that Stanford could package the letters in the Defendants' envelopes to make them look like they were being delivered directly by Defendants to the individual investors. Thus investors mistakenly believed that they were receiving the endorsement letters independently of Stanford and directly from BMB and/or Willis.

1. Defendant Bowen's Relationship with Stanford Financial

53. BMB's relationship with Stanford Financial went back many years, as BMB, and Defendant Bob Winter in particular, acted as the "Insurance Specialist" for the Stanford Financial group of companies from at least the early 1990s and all the way until the SEC shut Stanford down in 2009. BMB employees, including Bob Winter, Chris Taylor, and Barbara Fortin (until she left the employment of BMB and became a full time Stanford Financial employee in January 2003) regularly attended meetings of the Stanford Financial Insurance

Committee, headed by Stanford CFO Jim Davis, which held meetings on a quarterly basis beginning in 2001. BMB employee Stephanie Guidry generally oversaw the Stanford account relationship and was a close personal friend of Barbara Fortin.

54. From the early 1990s until 2009, BMB served as the risk management consultants for all of Stanford Financial's operations and also procured all of the insurance (until Willis took over some lines from 2004 through 2008) for Stanford's global operations, including financial institutions package (domestic and global), business automobile, workers' comp., excess liability, insolvency/excess insolvency, commercial umbrella, marine, airline, commercial yacht, blanket crime, D&O, cargo, travel accident, corporate aviation, coin & bullion, property, general liability, political risk, employment practices liability, errors and omissions, professional liability, blanket bond, excess wrap, and loss prevention coverages. As part of its role as the risk managers for Stanford Financial, BMB was involved in risk underwriting on Stanford's operations and had to know its customer and understand its overall operations. BMB was provided with direct access to Stanford's operations, including the key entities' (like SIB and SGC) financials; had an in depth understanding of Stanford Financial's business; and knew how each entity within the Stanford entity was constituted, who owned it, and what each company did. Throughout its tenure as the risk managers/insurance brokers for Stanford Financial, BMB looked at, analyzed and provided insurance for every single company in the Stanford Financial group, including underwriting and procuring insurance for Allen Stanford's Antiguan newspaper;

for his Antiguan Airlines (Caribbean Sun and Caribbean Star); his Antiguan Restaurants; Antiguan Cricket Stadium; Antiguan Athletic Club; Antiguan yachts; Antiguan resort, golf and hotel projects, and, most importantly, his Antigua Banks (SIB and Bank of Antigua). In doing so, BMB was provided with access to Stanford Financial's operational and financial information on a yearly basis, as Stanford Financial grew exponentially from the sale of the SIB CDs.

55. Until Willis took over the Financial Lines coverages in 2004, Bowen also handled the Financial Lines of insurance coverage that provided insurance coverage for SIB. The Financial Lines typically included separate insurance policies for: Directors & Officers coverage; Financial Institutions Professional Errors & Omissions coverage; Bankers Blanket Bond; Blended Wrap; Insolvency coverage; and Excess FDIC. The Financial policies had one year terms, and expired in August of each year. As part of the underwriting for the Financial Lines coverage, BMB and the underwriters visited the Houston headquarters of Stanford Financial and also visited SIB in Antigua every year.

56. Like Willis, BMB was also involved in the underwriting process and procured insurance for Stanford's massive investments in extensive real estate development projects in the Caribbean, primarily Antigua. For example, in February 2004, following a "proposal meeting" with BMB, Stanford's head of insurance (and former BMB employee) Barbara Fortin sent an e- mail to BMB employee Rick Tucker requesting that he check on certain insurance issues, and informed BMB that Stanford's Guiana Island resort project off the coast of Antigua

was estimated to cost $895 million, which included construction of an airport hangar, an all-suites resort hotel with beach pavilion, a marina big enough to accommodate 70 boats, a golf course, equestrian center, and 19 luxury homes. In 2007 BMB procured insurance coverage for the majority of Stanford's Antiguan properties, including Stanford's cricket fields and stadium, and the Maiden Island resort project. As part of the underwriting for said insurance, BMB personnel traveled to Antigua on various occasions to tour Stanford's vast Caribbean real estate holdings, including Barnacle Point, Cedar Valley Springs, the Sugar Mill Hotel project, and the Maiden Island and Guiana Island resort projects.

57. Based on its experience analyzing the risk on, and procuring the insurance for, Stanford's Caribbean holdings, BMB knew that Stanford was investing and spending money heavily on real estate in Antigua and elsewhere in the Caribbean and that, as a result, a large portion of Stanford Financial's overall asset base was located in the Caribbean, and that Allen Stanford had spent hundreds of millions of dollars in Antigua, and was looking to spend hundreds of millions of dollars more finalizing his development plans for such projects as Maiden Island and Guiana Island. Based on its knowledge of Stanford Financial's business model, obtained as a result of years of experience analyzing the risk on, and procuring the insurance for, every single entity in the Stanford Financial empire (including SIB), as well as based on Robert Winter's position on the Board of Directors of SIB, BMB knew that the money Allen Stanford was spending buying up assets in Antigua came from the SIB investors, and knew that Stanford's rampant spending on Antiguan

real estate development projects was not consistent with what was being disclosed to SIB's clients.

2. Defendant Willis' Relationship with Stanford Financial

58. In July 2004, the Stanford Financial Insurance Committee decided to switch the Financial Lines coverage away from BMB and First City and over to Wills Group. At that time in 2004, Stanford Financial had just $20 million in maximum insurance coverage through the Financial Lines insurance as security to cover over $2 billion in deposits at SIB.

59. Stanford Financial was familiar with Willis Group because Willis had been providing insurance coverage for Stanford's Caribbean Airlines – Caribbean Sun and Caribbean Star – since at least 2002. In December 2002, the Stanford Insurance Committee discussed the need to have an insurance specialist company provide an audit on all insurance coverage in place for the Stanford group of companies. The Committee specifically charged one of its members to get in touch with Willis Group so that someone from Willis could attend the January 2003 meeting of the Stanford Insurance Committee. Thereafter, a Willis Group employee, Bill Rose, attended the January 2003 Stanford Insurance Committee meeting held in Houston and made a presentation about the range of services offered by Willis Group.

60. Thereafter Willis Group, fronted by Willis London, made a proposal to the Stanford Financial group of companies in June, 2003 to perform a risk review for Stanford Financial. The Willis proposal provided that, for a $20,000 fee (which would be

deducted from any brokerage commissions if Willis was eventually hired by Stanford to broker its insurance needs), Willis would conduct a "comprehensive review of all appropriate SFG operations" with the objective of understanding the overall organization and identifying Stanford Financial's risk profile. Some of the areas Willis identified that it would review included: (i) Stanford's primary products and services; and (ii) Stanford's customers.

61. In closing the proposal, Willis offered to enter into a type of financial partnership with Stanford, including allowing Stanford to sell its financial products to Willis employees and also proposing to enter into an agreement with Stanford "for the purpose of lead sharing/cross referencing commercial and personal prospects of mutual interest and benefit to both organizations".

62. Shortly thereafter, during a Stanford Insurance Committee meeting in August 2003, Barbara Fortin proposed that, if Stanford decided to hire the Willis Group, then they should consider working directly with Willis London and not with Willis' local Texas office. Another member of the Insurance Committee raised the issue of jurisdictional problems in working directly with the Willis London office. Jim Davis responded that he would talk with senior management at Willis Group to inquire about their ability to work with Stanford directly from London.

63. In June 2004, Christopher London, who was at that time Willis Group's Chief Operating Officer, Global Specialties, visited Houston to meet with Jim Davis and Barbara Fortin to discuss the transfer of

the Financial Lines coverage for Stanford Financial from BMB over to Willis. During those meetings, the Stanford representatives discussed Stanford's Caribbean real estate development projects with Mr. London. In his follow up June 22, 2004 e-mail to Davis and Fortin, which attached a Willis proposal entitled "Overview of Financial Lines Marketing Process" for Stanford, Chris London referenced that he would have another Willis London representative follow up with Fortin on the Antigua property insurance issues. He closed by stating that Willis looked forward to "partnering [with] the Stanford Financial Group."

64. The Willis proposal attached to Mr. London's June 22, 2004 e-mail included a chart entitled "Willis Service Team for Stanford", which had Mr. London at the head as the Account Director, and Amy Baranoucky and Doug Ogilvie underneath him as Client Advocates for Stanford, evidencing that Baranoucky would work under the direction of Willis London on the Stanford account. A decision was made to have Baranoucky act as the "middle man" in the Willis-Stanford relationship due, in part, to perceived jurisdictional issues as well as due to the time differences between Texas and London. Baranoucky thereafter acted as the agent for Willis London/Willis Group in all dealings with Stanford Financial, including the preparation, execution and mailing of the insurance endorsement letters in dispute.

65. By July 2004, the Stanford Insurance Committee made the decision to switch all of its Financial Lines of coverage over to Willis Group. Willis London established a structure whereby Defendant Amy Baranoucky would be the client

contact for Stanford Financial, but that Baranoucky would work under the direction of Doug Ogilvie and other representatives of Willis London. Willis London committed to perform all of the insurance underwriting procedures and marketing work for Stanford Financial through its employees like James Hunt, Duncan Holmes, Patrick Caine, and (eventually) Mark Payne, who thereafter performed the bulk of the work for Stanford Financial. By letter dated July 6, 2004 signed by Jim Davis, Stanford Financial appointed Willis as its sole and exclusive broker for the following insurance coverages: (1) Blanket Bond; (2) Blended Wrap; (3) D&O; (4) Errors & Omissions; (5) Employment Practices Liability; (6) Excess Blanket Bond; and (7) Fiduciary Liability.

66. For its work brokering the insurance coverages for Stanford Financial over the next 4 years, Willis earned a 20% commission of the insurance premiums paid out by Stanford each year. Willis informed Stanford that the 20% commission would be divided between the various Willis entities as follows: (1) Willis London: 13%; (2) Willis Group: 6%; (3) Willis Colorado: 1%. Over the next few years, between 2004 and 2008, Willis earned hundreds of thousands of dollars per year in insurance brokerage commissions from Stanford Financial for its Financial Lines.

67. As part of its work in procuring the Financial Lines coverage for Stanford Financial in the summer of 2004, Willis requested and received from Stanford, on or about July 7, 2004: (1) copies of SIB annual reports and financial statements; (2) SGC's investment adviser registration (form ADV) with the SEC; (3) and a sampling of the various Stanford entities' (including SIB's) promotional materials.

Also, on August 2, 2004 Fortin confirmed to Baranoucky that Allen Stanford owned "100% of everything", i.e., 100% of all of the various Stanford entities that comprised the Stanford Financial group of companies. Fortin also disclosed to Willis that over 50% of the revenues for the Stanford group came from the sale of SIB CDs. Also in July 2004, Fortin disclosed to Baranoucky that Stanford Financial was expanding across the United States by raiding and headhunting "high powered", "high net worth" brokers away from other brokerages, particularly in the South, and wanted some kind of insurance protection from lawsuits by the former employers of the brokers, as Stanford had already been sued by UBS when it stole the high net worth "Santi group" from the UBS Memphis office.

68. Every year thereafter, from 2005 through 2008, Stanford Financial provided Willis with its financial statements, including audited financial statements for SGC and the financial statements and Annual reports for SIB. Willis also received information on a wide variety of Stanford Financial's operations, including issues surrounding its purchases of banks in Venezuela, Panama and its purchase of a broker dealer in Ecuador. Willis also received information from Stanford on SEC compliance issues and legal claims, including the claims files for the FAs that quit and sued or were sued by Stanford, including Charles Satterfield (who accused Stanford of deceiving the SEC); as well as the files on Leyla Basagoitia and Lawrence J. DeMaria, both of whom accused Stanford of running a massive Ponzi scheme.

69. In December 2004, Willis London employee Doug Ogilvie was designated as the Willis "Client Advocate" for Stanford Financial. Ogilvie provided Stanford Financial with the Willis "Client Bill of Rights", which states that "Willis' global resources and services are committed to understanding the client's company." The Willis "Client Advocate" model requires that the Willis Client Advocate for a particular client "know the client's business" and "keep the Willis team thoroughly briefed on the client".

70. In December 2004, Barbara Fortin recommended to the Stanford Insurance Committee that Willis representatives travel to Antigua to have a better understanding of Stanford's business needs in order to develop an overall insurance plan for Stanford. As a result, in late January or early February 2005, representatives of Willis London, including Doug Ogilvie, Patrick Caine, and Duncan Holmes, along with Baranoucky, traveled to Antigua to personally view some of the ongoing real estate development projects, including Stanford's massive resort projects, the Maiden Island project and the Guiana Island project, which the Willis representatives personally toured. These projects contemplated massive construction of hotels and resort facilities, airstrips, marinas and golf courses on some of the outlying islands around Antigua. Little did the SIB investors know that their money was being used to invest in Caribbean resort projects.

71. As part of that January 2005 trip to Antigua, and due to the "confidential nature" of the Stanford resort projects, Jim Davis requested that Willis London sign a Confidentiality Agreement with

Stanford Financial designed to keep the details of Stanford's Caribbean real estate development projects secret. Willis agreed and actually prepared a Confidentiality Agreement and sent it to Stanford in Houston for approval. On January 25, 2005, Fortin forwarded the Willis Confidentiality Agreement to Stanford General Counsel Mauricio Alvarado for review, with the note that "[w]e want the underwriters to keep information regarding our Antigua business plans confidential". Alvarado approved the Willis Confidentiality Agreement and the agreement was signed between Willis London and Stanford Financial Group (Houston, Texas) on or about February 5, 2005.

72. On July 8, 2005, Willis London sent Fortin in Houston Willis' draft Underwriting Information Presentation for Stanford's real estate development projects in Antigua. As part of its underwriting for the Stanford development projects, Willis London received detailed information from Stanford's Fortin, including details concerning the scope and nature of the various projects and the anticipated amounts of money Stanford planned to invest in the projects. As just an example, in August-October 2005 Fortin provided Willis London with a summary cost analysis for some five real estate development projects in Antigua (including the Maiden Island project), which together contemplated an investment by Stanford of over $333 million. At that time, SIB had total investor deposits of roughly $3 billion, which Willis London knew because it performed the financial underwriting for the Financial Lines of insurance for, inter alia, SIB. Thus Willis London knew that Stanford was investing over 10% of its investment portfolio in risky illiquid Antiguan real

estate projects. It was also in October 2005 that Fortin disclosed to Willis London another "huge" Stanford real estate project, valued at $150 million, that was going to be developed in the United States.

73. Since Willis London was familiar with Stanford's overall business operations, its business model, products, customer base, and its promotional materials and disclosures to its investors which touted liquidity above all else, Willis London knew that Stanford was essentially running a real estate development fund and that Stanford's investments in Antiguan and other real estate projects were not being disclosed to Stanford Financial's investor clients. Willis London also knew that Stanford's development activities were highly secretive. Besides signing a Confidentiality Agreement on the projects, Fortin also informed Willis in February 2006 that, as to the Guiana Island project, "everything is very secret", and "only Mr. Stanford and the architect know what is going on".

74. Willis continued to expand its insurance business with Stanford, working with Stanford on various insurance lines including political risk insurance and other insurance lines to cover Stanford's expanding international (particularly Latin American) operations. In March 2005 Willis sent Stanford a presentation regarding Willis' International Capabilities. In that presentation, Willis promoted its "One Flag" culture, which Willis described as meaning "that we work together as a single team across all our Business Units, to deliver value to the client. In this way our client partnership model becomes a unique strength". Over the years, Willis London employees Doug Ogilvie, James Hunt, Duncan Holmes, along with Willis Colorado

employee Amy Baranoucky, regularly traveled to Houston, including to attend the quarterly meeting of the Stanford Financial Insurance Committee (chaired by CFO Jim Davis).

3. Defendants' Participation in the Insurance Letter Distribution Campaign

75. Defendants aided and abetted and assisted Stanford Financial to create and perpetuate the myth that investments in SIB were insured. Defendants assisted this segment of Stanford's fraud by creating and distributing the insurance endorsement letters described herein. See true and correct sample copies of 1996, 1998, 1999, 2001, 2002 and 2004 letters from BMB, signed by Robert S. Winter, and sample copies of the 2005, 2006 and 2008 letters from Willis, signed (with the exception of the 2008 letter) by Amy S. Baranoucky, attached as Exhibit "4" hereto and made a part hereof for all purposes. BMB and Willis both knew that the text of these letters was written by Stanford and yet BMB and then Willis agreed to print the letters out on their respective letterhead, leaving the name of the recipient and his or her address, as well as the date of the letter, in blank. The letters were printed in blank because both BMB and Willis knew that Stanford intended to fill in the individual recipient investor's name and address and the date in order to create the impression that BMB and Willis had created the letter especially for that investor, independently of Stanford.

76. The "safety and soundness" letters issued by Defendants are remarkable in that they all use identical language to describe SIB. Indeed, the text of the letters was actually written in the early 1990s

either by SIB Board Member Winter or by another Stanford Financial employee in Houston, Gilberto Lopez, who has since been indicted by the U.S. Justice Department. The text of the letters thereafter remained virtually unchanged over the years, to such a sloppy extent that the text of the letters regarding duration of insurance coverage remained the same even through different years.

77. The letters tout SIB as being, inter alia, "professional" and comprised of "first class business people". Id. The BMB and Willis letters also proclaim that SIB is insured by various Lloyd's insurance policies, "placed" by Defendants for SIB. Like the Spanish-language SIB promotional materials described above, the BMB and Willis letters uniformly omit to disclose the most important term of the insurance policies described in the letters - being the actual amounts of the coverage afforded by the referenced insurance policies - thereby (and when coupled with the misleading SIB promotional materials as well as the fact that the letters were personally directed to individual investors) intentionally creating the misleading impression that the insurance policies provided coverage for the recipient investor's investments in SIB. Also similar to the SIB promotional materials attached hereto, the BMB and Willis letters represent that the Lloyd's policies were only issued because SIB had "qualified" for said policies by undergoing (and apparently passing) "*stringent Risk Management Review[s] conducted by an outside audit firm*" (emphasis added). Id.

78. The letters were signed by Winter, a member of the SIB Board of Directors, on behalf of BMB every year from at least 1996 through 2004, and provided to employees of Stanford Financial in Houston to be disseminated throughout the world. BMB agreed to provide the insurance endorsement letters sometime in the early 1990s. As a member of the Board of Directors, Winters knew that the purpose of the letters was to help market and sell SIB CDs. And his company BMB also knew that. As just one example, in October 2003, a Venezuelan SIB investor sent a letter to BMB directly, asking BMB whether his money would be safe at SIB in case anything ever happened. The BMB employee who received the letter, Stephanie Guidry, who was the BMB Account Manager for Stanford, forwarded the letter on to Barbara Fortin at Stanford with this note – "do I just send him one of the SIB letters?" Fortin responded by telling Guidry to inform the SIB customer to contact his FA to request an insurance letter. On another occasion, in February 2004, Fortin e-mailed Guidry at BMB asking for more letters because the previous batch "did not print well". Guidry printed out the letters and sent them to Winters to sign. In thanking Guidry for getting the new batch of letters out on an expedited basis, Fortin apologized for making BMB re-do the letters, and said "they are fine as far as I am concerned, but the Financial Consultants are complaining the [sic] it looks like we doctored them."

79. Once Barbara Fortin, who had decades of experience in the insurance industry, joined Stanford Financial and was put in charge of the Stanford insurance portfolio in 2003, she immediately became familiar with, and was placed

in charge of, the insurance letter distribution program. Despite her thirty (30) years in the industry (and despite her having previously worked at BMB), she had never seen letters like these and found them to be highly unusual and irregular. As a result, she questioned Winter about the letters and what they were being used for. He informed her that they were used to "provide comfort" to Stanford Financial's international customers about the safety and security of SIB.

80. Between 1996 and 2003, BMB provided literally thousands of insurance endorsement letters to Stanford Financial, all of them with the date and addressee intentionally left blank, and all of them signed by Bob Winter, with full knowledge that Stanford was going to send the letters on to its clients. And, at the request of Stanford, BMB even agreed to modify the letters to tailor them to more discerning clients. Thus BMB eventually devised two (2) separate endorsement letters: one that just generally described the insurance policies, and a second one that also provided the rating (A.M. Best) information on the issuer. BMB also agreed on at least one occasion in 2004 to tailor the letter to cover a separate Stanford entity – Stanford's Ecuadorian brokerage firm. An Ecuadorian FA requested a BMB letter from Fortin for the brokerage firm "Stanford Group Casa de Bolsa". Fortin responded by e-mail dated April 12, 2004 and authorized the issuance of the letter but noted that they would have to change the name from SIB to the brokerage firm, and that to do she would have to request it from BMB. The next day Stanford Financial shipped out the letter signed by Winter endorsing "Stanford

Group Casa de Bolsa" and describing the same insurance policies covering SIB.

81. Even after BMB transferred the endorsement letter campaign to Willis, it was still receiving correspondence from SIB clients. In February 2005, another Venezuelan client of SIBL wrote to BMB that he had received one of the BMB insurance letters in 2003 and wanted to get a copy of the 2005 coverage letter. Guidry forwarded the request from the SIB client to Fortin, who instructed Guidry to notify the client that he "should contact client services at SIBL to request a new letter".

82. When Stanford Financial switched insurance brokers from BMB to Willis, naturally they also switched the insurance endorsement letter writing campaign from BMB to Willis as well. On Monday August 9, 2004, various representatives of Willis London, including Doug Ogilvie and Patrick Caine, along with Amy Baranoucky from Willis Colorado, traveled to Houston to meet with Davis, Fortin and other members of the Stanford Insurance Committee to finalize the quotes on the Financial Lines of insurance for 2004/2005. At that meeting, Davis and Fortin discussed the insurance letter program and requested that Willis assist Stanford with the issuance of the letters. Upon information and belief, the Willis representatives asked the Stanford representatives as to the purpose of the letters, and the Stanford representatives responded that it was for marketing purposes. The Stanford representatives further informed Willis that Stanford would provide the full text for the letters and that all Willis had to do was sign the letters in blank and in bulk, and ship them to Stanford. The Willis representatives, including Doug Ogilvie of

Willis Ltd., agreed that Willis Colorado would provide the letters on Willis Colorado letterhead, but with the addressee and the date left in blank, as part of servicing the Stanford account.

83. At some point during the week following the August 9th meeting in Houston, Stanford employees caused the text of the BMB insurance letters to be delivered to Baranoucky for her to use to prepare the new insurance letters on Willis letterhead. The following Monday, August 16, 2004, Baranoucky e-mailed Fortin at Stanford to inform her that:

> "[h]aving not anticipated your request for the letters, we have run out of letterhead. We ordered more but it won't arrive until tomorrow. As such, can I print the letters tomorrow after receiving the letterhead and overnight to you for delivery on Wednesday? If this isn't acceptable, I can create "homemade" letterhead using our color printer, it just won't be on nice bond paper. Let me know what your preference is".

Fortin responded to Baranoucky as follows: *"[h]ow many letters can you do with your current supply of letterhead? Do what you can and send the balance once the additional letterhead is available. I also need envelopes"*. Baranoucky replied later that same day and told Fortin that she had run out the letterhead as she was printing the first letters, but that, at any rate (and reflecting her knowledge that the letters were to be sent in blank): *"all of the ones that I had printed had the date on anyhow, so I have tossed them and so will have to start new once the letterhead arrives tomorrow"*. Baranoucky also

confirmed that she would send along *"1 blank letter size [Willis] envelope per letter issued"*.

84. The next day, August 17, 2004, Baranoucky wrote Fortin, with copy to Doug Ogilvie in London, to inform that she was going to overnight the letters and to thank Fortin for her patience *"as we learn how to service your account to your satisfaction"*. Later that same day, Baranoucky discovered that BMB had made a practice of sending two differently worded letters, and so she wrote to Fortin yet again: *"[s]eems there are two letters for Stanford International Bank. Which one would you like for me to use or do you need them both?"* Fortin replied that *"we use both SIBL letters depending on the situation."*

85. On August 17, 2004, Baranoucky sent, with Willis London's explicit approval, the first batch of blank Willis Colorado insurance letters, along with Willis envelopes, to Stanford Financial in Houston, with full knowledge that said letters were to be used by Stanford Financial to market SIB and the SIB CDs to prospective investors, with Stanford filling in the dates and the recipients' names and addresses for each letter.

86. A month later, on September 21, 2004, Fortin e-mailed Baranoucky, with copy to Patrick Caine of Willis London, that she needed 30 more of the SIB insurance letters overnighted to Houston. Baranoucky responded that she would print the letters out immediately and overnight them.

87. Three weeks later, on October 15, 2004, Fortin forwarded a Word document containing the Spanish translation of the insurance letter to Baranoucky, and asked Baranoucky: "[w]ould you

mind putting it on Willis letterhead and sending me 25 copies". Baranoucky responded "I would be happy to print these out", and asked if Fortin needed them to be overnighted, to which Fortin responded in the affirmative.

88. Every year thereafter, from 2005 through 2008, Willis Colorado, with the authorization of Willis London, repeated this procedure and repeatedly signed (in blank) and shipped packages of the insurance letters (as many as 7 different ones according to an August 11, 2006 e-mail from Baranoucky to Fortin) to Stanford in Houston knowing that the letters were to be used for marketing SIB CDs to clients.

89. There is no question that Willis knew that Stanford was using these letters to send to SIB clients. In an August 11, 2006 e-mail from Baranoucky to Fortin, with copy to Doug Ogilvie at Willis Ltd., the reference line reads "Client letters", and in the e-mail Baranoucky states that in looking through her files, "we issued seven different client letters for you last year". She goes on to state that she had updated the letters and asks Fortin if "these are the letters you would like issued this year and if so, how many of each?" Fortin replied that she wanted Baranoucky to issue all the letters and ship 35 original copies of the SIBL letters with Spanish versions. Having not received the letters, Fortin wrote to Baranoucky on August 24, 2006 that "[w]e need the letters ASAP. We have already started receiving requests and must get them out". Once she received the letters from Baranoucky, Fortin wrote back complaining that the "letters sent do not leave room for us to put client address on them. Can you please send another batch and move the letter

down as far as you can on the page?" She therefore instructed Baranoucky to get as many batches of the SIB letter done as quickly as possible and then reformat the rest for delivery as soon as possible.

90. In fact, some SIB clients even called Baranoucky in Colorado to ask about the insurance coverage for SIB and request evidence of the insurance. On April 16, 2006 Baranoucky e-mailed Fortin that a SIB client had called her asking for evidence of insurance. Baranoucky told Fortin: "As always, I direct these requests to you." Fortin replied: "[p]lease have the client call his financial adviser".

4. The Insurance Letters are Misleading and Fraudulent

91. The insurance endorsement "safety and soundness" letters prepared and shipped to Stanford by Defendants over the years were clearly designed and intended by Defendants to be distributed to Plaintiffs and other actual and prospective investors in Stanford Financial/SIB, and contain untruths and omissions of material facts directed at Plaintiffs with the purpose of promoting and selling SIB and its CD products to Plaintiffs. Defendants Willis and BMB had no reasonable basis to make the statements contained in the letters because they knew or should have known (and were therefore reckless in communicating information to the contrary) that SIB was violating a host of laws and not disclosing material facts about its investments to its clients, and also knew that SIB did not undergo "stringent" annual Risk Management reviews, and that any reviews were not conducted by a reputable audit firm. The letters also misleadingly suggest that the

risk management reviews were done on an annual basis, because the letters were issued annually and discuss insurance policies that were issued annually, and the letters state that in order to qualify for the policies SIB had to undergo the risk management reviews.

92. The only "risk management" audit conducted on SIB by any third party was a limited scope review performed only once, in 2003, by a one-man operation in Florida called "Stogniew & Associates" that resulted in a flimsy, "whitewash" report full of disclaimers. Yet BMB issued the letters from 1996 to 2003 without ever even seeing any risk management review of any kind. And, upon information and belief, Baranoucky blindly signed the Willis letters from 2004 through 2007 or 2008 without ever having seen the 2003 Stogniew report. Baranoucky in particular signed the letters endorsing SIB despite her knowledge that (1) the text of the letters was written by someone at Stanford and (2) without having verified any of the letters' content. Defendants just recklessly issued the Stanford-written letters from 1996 through 2008 in order to help Stanford lure investor clients to purchase the bogus offshore CDs.

93. What is perhaps most fraudulent about the letters is the fact that they were sent to SIB investors at all. None of the insurance policies listed in the letters actually cover or provide insurance for any SIB investor/depositor. Investors like Plaintiffs were not Defendants' clients, were not the insured beneficiaries of the policies, nor were they additional insureds, and there is no logical reason why Defendants could think that depositor/investors in SIB should receive such letters, unless the letters

were designed to mislead the recipients into believing the listed insurance (with names like "Excess FDIC" and "Banker Blanket Bond") somehow applied to them or protected their particular investments in the Bank.

94. The letters are also fraudulent because, as described above, the text of the letters was actually written by employees of Stanford Financial, and yet both BMB and Willis conspired with Stanford Financial to create the false impression in the minds of investors that the letters were issued by BMB and Willis independently of Stanford. The clear intent of the insurance letter distribution program described herein, with Defendants signing and shipping the letters to Stanford with the ultimate recipient, and even the date of the letter, left in blank, was to deceive investors into believing that the letters had in fact been especially prepared by Defendants and sent to each individual investor, such that the letters constituted, in the minds of the individual investors who received them, an independent endorsement of Stanford Financial and SIB and the insurance coverage for SIB made by two independent and (in the case of Willis) well known and prestigious insurance brokerage firms. This intent was fraudulent from conception and the investors were never told that, in fact, the insurance letters they thought came from BMB and Willis had in fact originated from Stanford itself, such that the letters only really constituted endorsements of Stanford by Stanford itself. Even worse, the letters issued by BMB completely fail to mention that the signatory thereto, Robert S. Winter, was in fact a member of the Board of Directors of SIB. Instead the BMB letters give the distinct impression that BMB is a

wholly unrelated company providing an unbiased outside "opinion" about SIB.

95. Moreover the most important term of any insurance policy is the dollar amount of the coverage, and that vital term was intentionally omitted for each of the policies listed in the letters sent every year to actual and prospective SIB investors. Since SIB was grossly underinsured based on total deposits (over $7 billion by 2009) versus total insurance ($50 million), Stanford Financial was adamant about keeping the actual dollar level of insurance coverage a secret from the investors and others. Fortin and others on the Insurance Committee consistently made a point of informing other Stanford employees about the confidential nature of Stanford's insurance program, and Stanford was very careful to keep actual insurance certificates that revealed the size of the policies under lock and key. Fortin even stated on several occasions that the revelation of the true level of insurance coverage on SIB could cause damage to Stanford. On August 20, 2004, a SIB client wrote BMB directly requesting additional information about SIB's "depository insolvency" insurance that was listed in one of the BMB insurance letters. As usual Stephanie Guidry at BMB forwarded this request on to Fortin, who responded by instructing Guidry that: "whenever you get a request for insurance information, of any kind, from a client, please refer them back to us. Do not release any information without our prior approval."

96. As a result, no investor knew that the maximum coverage SIB had under its "Excess FDIC" policy was $20 million – to cover over $7 billion in deposits. And no investor ever knew that the

maximum coverage SIB ever had at any time was $50 million – again, to cover over $7 billion in deposits – a coverage ratio of less than 1 percent. As the risk managers and insurance brokers for all of Stanford Financial, Defendants had full knowledge that SIB was grossly underinsured, and yet continued to send the insurance letters describing insurance policies, but intentionally omitting the amounts of coverage, every year to SIB investors. The omission of the insurance coverage amounts in the letters constitutes a clear intent to deceive on the part of Defendants, designed to make the recipient of each letter believe that his individual investment was insured and protected, because, after all, if the insurance described in the letter didn't apply to the individual investor's investment in SIB, then why was the investor receiving the letter?

97. Even many of the Latin American FAs believed that the insurance letters evidenced that their clients' investments in SIB CDs were wholly insured. As an example, on May 22, 2002 Mexican FA Raquel Alperstein e-mailed Houston requesting an "Insurance letter where it is mentioned that the FDIC covers all the Bank investments that exceed $100,000". Without attempting to correct Ms. Alperstein's understanding of the coverage, Houston promptly sent one of the Bowen letters referencing that SIB carried "Excess FDIC Insurance" so that she could provide the letter to a prospective client in Mexico City. Another Mexican FA wrote to Houston on April 26, 2002 requesting insurance letters for three prospects "to let them know about the insurance that SIB has with some insurance companies to protect all the deposits made by each of

our customers". The three letters were shipped to Mexico the next day.

98. Moreover, as the insurance brokers for Stanford Financial, Defendants knew that SIB was part of the Stanford Financial group and was being operated from Houston, Texas, and that the SIB CD products were being marketed and sold by Stanford Financial from, by and through Houston, Texas. All communications between Willis and/or BMB and Stanford Financial flowed through Houston, Texas, and the letters attached in Exhibit "4" were all routed by Defendants to Stanford Financial personnel in Houston, Texas with full knowledge that the letters were designed to be used by Stanford Financial in Houston Texas to promote and sell SIB CDs to clients throughout the world, including, inter alia, in Mexico and Venezuela.

99. Certainly, Defendants, in distributing these letters to Stanford Financial with the clear understanding that they would be redistributed to clients, engaged in severely reckless and misleading conduct designed with one goal in mind --- to advance the business goals of their client Stanford Financial.

5. The Insurance Letter Distribution Campaign in Action

100. Every year from the mid-1990s through 2008, Stanford Financial distributed hundreds, if not thousands of these misleading insurance letters worldwide. The procedure involved Stanford FAs from Venezuela, Mexico, Colombia, Ecuador and elsewhere writing to Stanford Financial personnel in Houston (such as Patricia Maldonado (1998-99), Cynthia Adames (2000-2002) and then Barbara

Fortin (2003-2007)) to request copies of the letters for one or more actual or prospective clients. The requesting FA informed Houston of the name of the client and the address, so that the Houston staff could take the blank letter provided by Bowen or Willis and fill in the name and address of the recipient, as well as the date, in order to make the letter appear "personal." Both BMB and Willis also provided their own firm letterhead envelopes to Stanford personnel in Houston so that the Stanford personnel could "package" the insurance letters to make it appear as if the letters came directly from BMB or Willis to the client, thus enhancing the illusion of an "independent" opinion by an outside insurance brokerage firm.

101. On many occasions FAs would, within the same request, request insurance letters for as many as a dozen clients (one FA requested letters for 20 clients in one request in 2002), and Houston would package and FedEx the letters immediately, typically the same day or next day. In 2001 alone over 500 BMB insurance letters were shipped from Houston to Latin America via FedEx at the request of Stanford FAs in countries such as Venezuela, Mexico, Ecuador and Colombia. Another 400 BMB insurance letters were shipped into Latin America in the *first half* of 2002 *alone*. At some point in time, believed to be in 2002, Stanford and Davis imposed a requirement that the insurance letters could only be sent to potential clients that had a least $1 million to invest in SIB and who requested the insurance letters as a condition of deposit. The vast majority of the requests for insurance letters in 2002 and thereafter came from FAs who referenced that the targeted prospective clients were looking to invest

anywhere from $1 million to $10 million each in SIB. And despite the change in the protocol for distribution of the insurance letters, several top producing FAs were able to secure a waiver of the requirement for long time SIB clients who required proof of insurance as a condition of continued investment in SIB.

102. The use of the insurance letters as marketing tools became prolific after 1999 when a copy of the insurance endorsement letter was included in the Stanford Financial training materials for the FAs. The Stanford FAs were indoctrinated on how to use the letters to market and sell the SIB CDs to new clients. Many of the requests for letters from the field requested the insurance letters from "our" Financial Specialist, referencing Robert Winters, who always signed the letters on Bowen letterhead as "Financial Specialist". Evidencing the widespread use of the insurance letters by the FAs, Stanford-Houston employee Patricia Maldonado, who was in charge of the distribution of the letters from 1998 to 2000, responded via e-mail dated June 7, 2000 to a Latin American FA's request for the letters as follows: *"I think I know why these are so popular these days. A training manual for the F/Cs included a copy of this letter.* ***So now everyone is 'Insurance Letter Happy'"***.

103. Typical of such a request from an FA is a request made by Venezuelan FA Jane Butler, who e-mailed Patricia Maldonado on May 18, 2000 requesting insurance letters for five different clients, as follows: *"I am in need of those famous insurance letters that are most helpful for marketing in Venezuela".* Another Venezuelan FA, Vanessa

Barreto, wrote to Cynthia Adames (who was in charge of the letter distribution from 2001-2002) at Stanford Financial's headquarters in Houston on November 5, 2001 to request a Bowen insurance letter as follows:

> *Due to a prospect's request I would like, if it is possible, a signed letter which describes the insurance programs that secure SIB's funds. This is for a prospect who is interested in something in writing that certifies him of these insurances and assures him of the bank's security.*

104. The insurance letters worked incredibly well for the Latin American FAs in selling the SIB CDs. In requesting the letters from Houston, Latin American FAs frequently noted that the investor's receipt of the insurance letter was the only thing standing between the investor agreeing to close a deal and investing his money in the SIB CDs. Other FAs wrote to Houston requesting letters and informing that the prospective client would not invest without a copy of the insurance letter. As a result, the FAs regularly thanked the insurance letter distributors from the Houston office for sending the letters. One Latin American FA, Nicolay Del Salto, wrote to Cynthia Adame on February 26, 2002 that: "[t]he info you have sent to my prospects in the past has been extremely helpful and just wanted to let you [sic] how much that increases our credibility". Other Latin American FAs wrote to express their gratitude at how much the letters helped them to market SIB to prospective customers.

105. Of course, and given the commission incentives paid to the FAs by Stanford Financial to sell the SIB CDs, the FAs took additional measures to get the word out to all of their prospective customers that the SIB CDs were insured, including re-using the insurance letters over and over again. Once received by the FAs in Latin America, the insurance letters were like loaded guns ready to be used on anyone at any time. All the FAs had to do (and did do repeatedly) was "white-out" the intended recipient's name and then re-use the same letter with a different client. Many of the Latin American FAs had Houston send them insurance letters addressed to themselves (i.e., addressed to the FA) at their local branch office, so that they could make copies of the letter and distribute it out to as many clients as they wanted. Other Latin American FAs simply kept a copy of the insurance letter in their desk drawer and showed it to prospective customers. Furthermore, on at least one occasion, in March 2004, an FA contacted Barbara Fortin to request an insurance letter for a client who did not meet the $1 million profile, but in making the request the FA informed Fortin that the client had several friends who did have over $1 million to invest and that if the FA could just get the insurance letter to his client, he was confident that his clients' friends would also invest in SIB. Ms. Fortin authorized the shipment of the insurance letter to the FA's client the next day. Slowly but surely, the word spread throughout Latin America that the SIB CDs were insured by Lloyds of London.

E. The Stanford Reality

106. The reality of the Stanford Financial empire was that it was nothing but a massive, worldwide Ponzi scheme. The Stanford Financial companies operated together as a single business joint enterprise dedicated to the fraudulent sale of SIB CDs, which sales were the lifeblood of the entire enterprise. The master manipulator and salesman, Allen Stanford reached new heights in terms of creating and perpetrating the ultimate "confidence" scam on a global level. Stanford became a true international financial pirate, absolutely intent on operating an outlaw investment company from his Caribbean safe haven completely outside the regulatory confines of the laws of any country, whether the United States, Antigua, Mexico or elsewhere. Indeed Stanford Financial violated the laws of virtually every country it operated in, including the United States, Mexico, Venezuela and Antigua. Stanford's repeated commission of regulatory fraud in various countries enabled and fostered the growth of SIB's CD sales.

107. Allen Stanford's personal history, by itself, was a red flag and cause enough to question the veracity of the image he created for the Stanford Financial empire. His first business, a chain of Waco, Texas-based gyms called "Total Fitness", collapsed into bankruptcy in 1982. Allen Stanford declared personal bankruptcy as well in 1984 and was discharged from $13.6 million in obligations.[5] Stanford fled to the Cayman Islands where he

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[5] *BusinessWeek*, March 5, 2009, "*Stanford's Rocky Start.*"

became a scuba diving instructor. It was there that he met Dutch ex pat Frans Vingerhoedt, who introduced him to the world of offshore banking.

108. By 1985 Stanford opened his first bank, Guardian International Bank ("Guardian"), on the tiny (12,000 residents) Caribbean island of Montserrat, which at that time was known mostly for its extremely lax banking regulations. Virtually all of the banks that were opened in Montserrat in the 1980s were "paper" banks dedicated to fraud. In fact David Marchant, the editor of "Offshore Alert", was quoted as stating that "the only reason you opened a bank in Montserrat was to commit fraud."[6]

109. It was at that time, in the late 1980s, that Stanford began the charade linking his new offshore banking business to the insurance business his grandfather had run in Mexia in the 1930s, creating the illusion for investors that the Stanford Financial companies had been in the finance business for decades, instead of just a couple of years. By 2008 even some Stanford Financial employees believed the myth that Stanford Financial had been in business for over 70 years.

110. Guardian served as the starting point roadmap for the eventual creation of the Stanford Financial empire. Stanford established representative offices for Guardian in Miami and Houston, under the name of Guardian International Investment Services, designed to cater to wealthy

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[6] As quoted in Bryan Burroughs, "*Pirate of the Caribbean*", Vanity Fair, at 81 July 2009.

Latin American clients.[7] Stanford brought in his old college roommate James Davis to help run operations. Guardian offered CDs with rates typically 2-3% above the average rates available in the market, all with the confidentiality associated with offshore private banking.

111. By 1989 the banking system in Montserrat came under investigation by British and U.S. authorities. Guardian came under scrutiny for possible drug money laundering, and so Stanford began looking for other locations for his bank. In December 1990 Stanford incorporated Guardian in Antigua. By May 1991 Stanford's banking charter was revoked by Montserrat. So Stanford moved his banking operations to Antigua, and simply continued the same basic business plan that had proven so profitable for Stanford in Montserrat. Stanford eventually changed the name of the bank from Guardian to Stanford International Bank ("SIB") in 1994.

112. Once established in Antigua, Stanford quickly set about establishing a symbiotic relationship with the local government. In return for political cover, Stanford eventually became a major source of funding for the entire island, loaning hundreds of millions of dollars to the Antiguan government over the years. Stanford even bought the Antiguan newspaper, the Antiguan Sun. By 2004, the island government owed Stanford Financial over $87 million – nearly half of its annual tax revenues. In that same year, SIB had grown to over $3 billion in deposits.

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[7] *BusinessWeek*, Feb. 24, 2009, "*Did Court Ruling Prolong Stanford Probe?*"

113. So tight was the relationship between Stanford and the Antiguan government that, when Stanford Financial was accused of money laundering in 1999, the Antiguan government turned to Stanford himself to rewrite the country's banking laws. Stanford and his agents were then named to the commission, the Antiguan Financial Services Regulatory Commission ("FSRC"), created and charged with supervising Antigua's banks. Stanford then used the new commission to wrest control of Antigua's offshore banking industry from the Government. As a result, the U.S. State Department issued an advisory to U.S. banks to scrutinize all financial transactions coming in or out of Antigua for evidence of money laundering.[8]

114. Jonathan Winer, then-head of the State Department's Bureau for International Narcotics and Law Enforcement Affairs, said at the time in 1999 that Antigua is "one of the most attractive financial centers in the Caribbean for money launderers", and that "Antigua has long been one of the worst regulated offshore centers in the world."[9] Winer was recently quoted as saying that when he asked an Antiguan banking official in the late 1990s why anyone would choose that country for banking as opposed to New York, London, Tokyo or Paris: "he scratched his head and after a while he said 'I guess

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[8] *Houston Chronicle*, July 16, 2000, Banker drawing scrutiny / Houstonian's Antigua empire raises questions.

[9] Statement to the US Congressional House Committee on Banking Financial Services, Jonathon Winer, US State Department, June 11, 1998.

would have to be the secrecy...I'd say it's the secrecy plus the lack of standards or real controls."[10]

115. Antigua's well-deserved reputation for corruption and lax banking regulations is borne out by the Plea Agreement entered by Stanford CFO Jim Davis ("Davis Plea"), as well as by the June 18, 2009 federal grand jury Indictment of inter alia, Allen Stanford, Laura Pendergest- Holt, and Leroy King ("King"), Stanford's good friend and the former head of Antigua's FSRC (the "Indictment"). The Davis Plea and Indictment allege that for years King, while acting as the CEO of the Antiguan FSRC, accepted bribes from Stanford and/or his associates in return for ensuring that the FSRC "looked the other way" and did not properly perform its regulatory functions or supervise SIB. King even entered into a bizarre Voodoo-like "blood brother" ritual with Allen Stanford in which he agreed to forever be bound to Allen Stanford. As part of the blood brother relationship and bribery, King became Stanford's regulatory spy and "inside man" in terms of relaying information to Stanford concerning the SEC's investigations of Stanford Financial and SIB from 2005 all the way until 2009. All of this was just part and parcel of Stanford's broader conspiracy to keep his Ponzi scheme alive by evading and obstructing regulation of SIB's activities at every turn and in every county.

116. Stanford Financial began to grow exponentially beginning in 2000, thanks in large part to Defendants' insurance endorsement letters,

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[10] "Stanford arrives for his Houston hearing", By MARY FLOOD and TOM FOWLER HOUSTON CHRONICLE, June 24, 2009.

the distribution of which became prolific in 1999. In 2001, Stanford filed for an SEC Regulation D exemption to allow Stanford Financial to sell SIB CDs to U.S. "accredited investors" in the United States (of course, Stanford continued to rampantly sell CDs to Latin Americans from its offices in Texas and Miami regardless of whether they were "accredited" or not). Stanford thereafter began the practice of "head hunting" for U.S. brokers and financial advisers, paying enormous signing bonuses to financial advisers to leave their jobs at other firms and transfer their book of clients over to Stanford Financial. Once at Stanford Financial, these same FAs were then pressured into promoting and selling SIB CDs to their clients, and were rewarded with outsized bonuses or fired, sued to recover the bonuses and blackballed in the industry if they refused to ccoperate and sell the CDs. Fueled by this influx of veteran brokers and investment advisers, Stanford Financial grew from 6 branch offices in the United States to more than 25 between 2004 and 2007.

117. From 2000 to 2008 Stanford Financial grew into a high-powered sales and marketing juggernaut. Stanford Financial began an intensive television advertising campaign in the United States designed to promote the sale of the CDs. The different Stanford Financial sales offices competed with each other for CD sales, and developed team names like "Money Machine", "Aztec Eagles" (the Mexico team) and "Superstars". In order to market and sell the SIB CDs, Stanford established a commission structure that provided huge incentives for the Stanford Financial FAs, including those in Latin America, to "push" the SIB CDs on investors like

Plaintiffs. SIB paid disproportionately large commissions to its FAs for the sale of CDs; they received a 1 % commission upon the sale of the CDs, and were eligible to receive as much as a 1 % trailing commission throughout the term of the CD. Stanford Financial used this generous commission structure to recruit established financial advisers to the firm, and to reward those advisers for aggressively selling the CDs to investors.

118. Beginning in 2003 Stanford's strategic plan to lure top financial advisers away from their employers to work for Stanford Financial began to back-fire as several U.S. advisers renounced their new position with Stanford and lodged complaints with FINRA f/k/a the NASD, including charges that Stanford Financial was running a massive Ponzi scheme. Some of the advisers were fired for refusing to promote and sell the SIB CDs to their clients. Between 2003 and 2006 over a dozen Stanford Financial advisers and employees, including Leyla Basagoitia in 2003 and Lawrence J. DeMaria in 2006, were discharged or resigned amid allegations of fraudulent practices at Stanford Financial. Defendants were aware of some or all of these claims.

119. The ultimate reality of Stanford Financial is that it was, at all times, illegally operating an investment company from, by and through Houston, Texas in the guise of operating an offshore bank in Antigua. In essence, Stanford Financial, acting through its international network of companies and FAs, lured money from investors like Plaintiffs; gave them an "IOU" piece of paper called a "Certificate of Deposit" in return; and then pooled all of the investors' money together to make investments in

various illiquid and high risk assets worldwide, including massive investments in Antiguan real estate. None of the investors' money was segregated and all investor money was commingled and then sprinkled as equity investments throughout the various companies that comprised Stanford Financial. As such, in reality Stanford Financial was operating as an outlaw, illegal investment company, not registered under the Investment Company Act, and selling its internal product securities to Plaintiffs and others from, by and through Houston, Texas. Section 47(b) of the Investment Company Act provides:

> A contract that is made, or whose performance involves, a violation of this [Investment Company] Act, is unenforceable by either party to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this Act . . . unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this Act. 15 U.S.C.§ 80a-46.

120. Stanford Financial was never registered or authorized to operate as an investment company in the United States, a fact that was never disclosed to Plaintiffs or the Class, who were consistently and uniformly told verbally and via the Stanford Financial promotional materials that, e.g. the Stanford Financial group based in Houston, Texas was authorized and regulated by the SEC and FINRA and backed by SIPC and Lloyd's of London insurance coverage. Plaintiffs and other investors

were never told the material fact that the acts of Stanford Financial and its unregistered investment company were void as a matter of law under Section 47 of the Investment Company Act.

121. Besides the fraud committed on Plaintiffs and the Class based on the marketing of Stanford Financial and SIB as being one and the same and that Stanford Financial was regulated by and in full compliance with U.S. law, as well as false and misleading representations that investments in the CDs were insured, Stanford Financial also touted the high liquidity of SIB's investment portfolio. For example, in its marketing materials distributed to Plaintiffs and the Class from at least 1995 through 2009, Stanford Financial emphasized the importance of the liquidity of the SIB CD, stating, under the heading "Depositor Security," that the bank focuses on "maintaining the highest degree of liquidity as a protective factor for our depositors." None of that was true. Likewise, Stanford Financial trained its advisers to stress liquidity in their marketing pitches to prospective investors, telling the brokers and advisers that "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients..." To ensure investors would buy the CDs, Stanford Financial, through its FAs, assured the investor clients that SIB's investments were liquid and diversified, and therefore that the CDs themselves were highly liquid and could be redeemed with just a few days' notice. But in fact, nearly 80% of SIB's investments were concentrated in high-risk, illiquid categories: (1) unsecured loans to Allen Stanford in the amount of $1.8 billion; (2) private equity investments in non-public companies; and (3) investments in Stanford

Financial companies with real estate holdings, including extensive real estate holdings in Antigua and elsewhere in the Caribbean.

122. Contrary to Stanford Financial's representations (both verbal and via the promotional materials) to Plaintiffs and the Class regarding the liquidity of its portfolio from 1995 through 2009, significant portions of SIB's portfolio were misappropriated by SIB's sole shareholder, Allen Stanford, and used by him to invest heavily in Caribbean real estate development ventures. In fact, by 2008, Stanford Financial was essentially a real estate development fund, a fact which Defendants new and which was never disclosed to Plaintiffs or the Class. At year-end 2008, the largest segments of the bank's portfolio were: the "loans" to Mr. Stanford and over-valued real estate, primarily in the Caribbean. By February 2009, Mr. Stanford had misappropriated at least $1.8 billion of investor money through bogus personal loans and "invested" an undetermined amount of investor funds in speculative, unprofitable private businesses controlled solely by himself, including massive investments in real estate and other private business ventures in Antigua. The rest of the money from investors was just blown by Stanford on creating and perpetuating the image charade with lavish offices, outsized bonuses and commissions paid to lure and retain top performing sales personnel, extravagant special events for clients and employees, and the other accoutrements necessary to shore up the Stanford Financial image of wealth, power and prestige. None of this was disclosed to Plaintiffs and the Class.

123. As alleged in the Davis Plea and in the criminal Indictment of Allen Stanford and the others, Stanford and his CFO Jim Davis "fabricated the performance of the bank's investment portfolio and lied to investors about the nature and performance of the portfolio. Gilberto Lopez and Mark Kuhrt, accountants for Stanford-affiliated companies, fabricated the financial statements. Using a pre-determined return on investment number, typically provided by Stanford or Davis, Lopez and Kuhrt reverse-engineered the bank's financial statements to report investment income that the bank did not actually earn. Information in SIB's financial statements and annual reports to investors about the bank's investment portfolio bore no relationship to the actual performance of the bank investments. SIB's financial statements and annual reports to investors were prepared, drafted and approved by Stanford, Davis, Lopez and Kuhrt. Stanford and Davis signed these falsified financial statements."[11]

124. At the end of the day, the entire Stanford Financial empire was dominated completely by one man—Allen Stanford – and Defendants knew it. Although SIB purported to have an independent board of directors, an investment committee, a chief investment officer and teams of global portfolio advisers and analysts, in truth and in fact the vast majority of the bank's assets (including the Antiguan real estate projects) were managed exclusively by Mr. Stanford and his right hand man and former college roommate Jim Davis.

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[11] SEC Second Amended Complaint, at ¶4.

125. In running the Stanford Financial empire from the United States, Stanford and Davis surrounded themselves with a close-knit circle of family, friends and confidants. The SIB Board of Directors included Stanford's 81 year old father and his 85 year old friend, O.Y. Goswick, a former rancher who was listed in Stanford Financial's annual reports as being somehow in charge of SIB's "investments", but who in reality, and according to his own son, did not have sufficient financial knowledge to understand SIB's operations and had suffered a stroke in 2000 that left his ability to communicate "nonexistent".[12] Defendants ignored all of these red flags in their zeal to assist Stanford Financial sell more CDs.

126. Moreover nepotism predominated within Stanford Financial, where the upper level management team was comprised of a tightly linked web of friends and family of Stanford and Davis. Just as Stanford brought in his old friend Davis, Davis in turn brought in his protégé, the young Laura Pendergest-Holt, whom Davis had met at the Mississippi Baptist church where Davis was a Sunday school teacher. In turn, Perndergest-Holt's cousin Heather Sheppard was an "equity specialist" at Stanford Financial, while her sister's husband, Ken Weeden, was Stanford Financial's managing director for investments and research. Jim Davis' brother in law, Danny Bogar, served as SGC's President and ran Stanford Financial's operations for the entire United States. Davis' son Zack also

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[12] Jamie Stengle, "*Dad, 81, to Stanford: 'Do the Right Thing*", Associated Press, February 20, 2009.

worked for Stanford Financial as an "equity specialist".

127. Pendergest-Holt's resume, in particular, was an instant red flag. As the Chief Investment Officer allegedly in charge of investments for SIB and overseeing an $8 billion portfolio, she had no real business or finance education or training. Lawrence Lieberman, senior managing director at Orion Group, an executive recruiter firm for the money management industry, was quoted as saying that Pendergest-Holt was hired for the position as Chief Investment Officer probably because Stanford and Davis "needed someone they could trust and not someone who could pick stocks".[13] Davis recruited Pendergest-Holt to work at Stanford Financial in 1997 when she was a recent 22 year old college graduate from Mississippi State, where she earned a degree in Math. She quickly worked her way up the ranks from research analyst to managing director of research and investments until she became Chief Investment Officer when she was 30 years old, all with no degree or background in finance whatsoever. According to Lieberman, Stanford "may not have wanted a legitimate CIO because that person might have asked a lot more questions and not played ball".[14]

128. The same is true of the lead accountants for Stanford Financial, both of whom were recently indicted as well. As alleged in the Indictment and the SEC's Second Amended Complaint, Gilberto Lopez was the Chief Accounting Officer for Stanford

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[13] Ana Driver and Svea Herbst-Bayliss, "*Stanford's CIO's Fast Path to Top a Red Flag*", Reuters, March 8, 2009.

[14] *Id.*

Financial, and yet he was not a licensed CPA. Mark Kuhrt, also indicted, served as the Global Controller for Stanford Financial, and yet was not a licensed CPA either. These two non-CPAs were in charge of accounting for a global financial services company with (allegedly) $50 billion "under advisement".

129. By year-end 2008, Stanford Financial had sold approximately $7.2 billion worth of SIB CDs to Plaintiffs and the Class by touting: (i) the bank's safety and security, including that invested funds were insured; (ii) consistent, double-digit returns on the bank's investment portfolio; and (iii) high return rates on the CD that greatly exceeded those offered by commercial banks in the United States. It was at the end of 2008, in the midst of the worldwide financial meltdown, that Stanford Financial began to stumble.

130. As alleged by the SEC and the United States Justice Department, in order to cover up a hole in SIB's balance sheet that would cause it to fall below minimum capital requirements, in 2008 Stanford and Davis concocted a bogus $541 million shareholder equity infusion by manufacturing a series of fraudulent "roundtrip" real estate deals whereby Stanford took a piece of Antiguan property (believed to be the Maiden Island and Guiana Island projects Defendants helped underwrite the insurance on) he purchased for $63 million and transferred it to some entities who "booked" it at $3.2 billion and then transferred shares in those entities back to SIB. In Mexico, David Nanes went even further by telling the Stanford Mexico sales force that Stanford had made this capital infusion because Stanford Financial was preparing to receive large sums of money from certain foreign

governments and central banks and therefore needed more shareholder equity to support this massive increase in deposit funds.[15]

131. In December 2008 Stanford Financial's clearing firm, Pershing, informed Stanford Financial that it would no longer process wire transfers from SGC to SIB for the purchase of CDs. Stanford Financial began suffering liquidity problems that prevented SIB from complying with client requests for transfers of funds. This had a huge impact on the ability of the FAs at Stanford Financial to keep clients pacified. Nevertheless the Stanford Financial FAs were ordered to continue to sell the CDs and bring in new money.

132. In January 2009, in the wake of the Madoff scandal, Venezuelan financial analyst Alex Dalmady performed a rudimentary review of SIB's returns over the years, taken from SIB's Annual Reports (the same ones Defendants reviewed every year), as a favor for a friend, and then published his findings in a Venezuelan magazine under the title "Duck Tales", which was then re- published in various blog postings. Dalmady concluded that Stanford Financial was nothing but another Ponzi scheme – a Ponzi "duck". The cat was out of the bag. As the pressure mounted in Mexico, Nanes continued to lie to his own employees at Stanford Mexico about what was going on at Stanford Financial, telling them that the reason for the liquidity crisis was because Stanford had made the decision to refund $1 billion to all of the U.S. investors in SIB CDs.[16]

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[15] Bauducco, *Imperio de Papel*, at 136-142.

[16] *Id.*

133. The U.S. federal authorities then issued subpoenas to Stanford Financial. In advance of a deposition before the SEC, Stanford Financial officials met with outside counsel in Miami on February 4, 2009. Two days later, on February 6, 2009, Allen Stanford's old friend Frans Vingerhoedt sent Allen Stanford an e-mail, copying David Nanes as well, that reads in part, that "things are starting to unravel quickly on our side in the Caribbean and Latin America...[w]e need to come up with a strategy to give preference to certain wires to people of influence in certain countries, if not we will see a run on the bank next week ...[w]e all know what that means. There are real bullets out there with my name on, David's name and many others and they are very real...[w]e are all in this together." See true and correct copy of e-mail dated February 6, 2009 from Frans Vingerhoedt to Allen Stanford and David Nanes, attached hereto as **Exhibit "5"** (originally attached as Exhibit "A" to the Receiver's Appendix to Response to Examiner's Report and Recommendation No. 1 in the SEC Action [docket 442]).

134. On February 17, 2009 the United States Securities and Exchange Commission ("SEC") filed a Complaint against SGC and SIB, as well as against Mr. Stanford and Mr. Davis, in the U.S. District Court for the Northern District of Texas, alleging a "massive Ponzi scheme of staggering proportions". The SEC obtained an injunction and froze the assets of the Stanford Financial group and appointed a receiver, Ralph Janvey to liquidate the companies. On that very same day, Nanes fled Mexico.

135. The SEC, through its Second Amended Complaint, has alleged a fraud of shocking magnitude. The SEC alleges that Stanford, together with his co-conspirators, engineered and carried out a decades-long scheme to convert Plaintiffs' and the Class' investments in Stanford Financial and SIB into his own personal "piggy bank" to fund his extravagant lifestyle, including paying for his private harem of women and their children; a fleet of jets; yachts; and mansions in several different countries, as well as funding all of the massive Caribbean real estate projects Stanford had dreamed up but never disclosed to the investors. On June 18, 2009 Stanford, Pendergest-Holt, Lopez, Kuhrt and King were indicted on 21 counts including wire and mail fraud, obstruction of an SEC investigation and money laundering. Jim Davis has since pled guilty to, inter alia, securities fraud.

VII. PLAINTIFFS' INVESTMENTS

136. All Plaintiffs invested in the Stanford Financial charade by purchasing CDs or placing their money in other depository accounts with SIB. Over the years that Plaintiffs purchased and maintained investments in SIB, Plaintiffs were repeatedly and uniformly told, either directly by Stanford Financial FAs or via Stanford Financial promotional materials, that, inter alia: (1) an investment in SIB was safer than investing in U.S. banks because SIB did not make loans; (2) SIB and Stanford Financial were U.S.-based businesses regulated by the U.S. Government; and (3) that an investment in SIB was completely safe and secure because it was guaranteed and insured by Lloyd's, was audited by an "outside" audit firm and subjected

to regular, "stringent" risk management examinations. All of this was false.

137. During the time that Plaintiffs purchased and maintained investments in SIB, Stanford Financial sales representatives and promotional materials repeatedly and uniformly omitted to inform Plaintiffs that, *inter alia*: (1) SIB was not regulated by the U.S. or any other government; (2) Plaintiffs' investments in SIB were not insured; (3) Stanford Financial was operating illegally as an unregistered investment company (whose contracts were thus void under § 47 of the Investment Company Act) soliciting and selling unregistered securities by, from and through Houston, Texas; (4) that SIB was investing its clients' money in speculative Caribbean real estate ventures; (5) that SIB was audited by a one man "mom and pop" audit shop under the control of Allen Stanford; and (6) SIB was not subjected to stringent risk management examinations that allowed it to qualify for the insurance policies.

138. Based on the representations and omissions of material fact made to Plaintiffs repeatedly and uniformly over the years, both in person by Stanford Financial FAs and via Stanford Financial promotional materials, Plaintiffs decided to invest money in, and maintain investments in, the SIB CDs from at least 1996 through 2009.

139. **Samuel Troice** - Plaintiff Samuel Troice first invested in SIB CDs through Stanford Mexico in 1997. Troice dealt directly with David Nanes. Nanes always promoted the SIB CDs to Troice as the only investment product offered by Stanford Financial. In making the initial and subsequent

decisions to invest and reinvest with Stanford Financial, Troice received the Stanford Financial marketing materials regarding Stanford Financial's operations as a whole, including that it was a Houston, Texas-based financial services conglomerate, and also was informed by Nanes that his investments in SIB were insured. Troice also annually received and relied upon the insurance letters from BMB and Willis described herein. Troice understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies, and as evidencing that his investments in SIB were insured. Troice was never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had very limited insurance coverage that would not protect his investments. Troice relied on the statements and omissions made in those letters in making the decision to invest in the CDs and in deciding to maintain his investments in (i.e., repurchase) SIB CDs every year until 2009. Troice did not sell any "covered" securities to purchase SIB CDs.

140. On many occasions over the years he maintained investments in the SIB CDs (1997-2009), Troice asked Nanes if the CDs were guaranteed by the FDIC, and Nanes explained that the CDs were not FDIC insured but did carry other types of insurance, including insurance covering fraud and theft. On at least four (4) separate occasions over the years between 1997 and 2009 when Troice met with Nanes to renew or buy new CDs and the discussions turned to insurance, Nanes picked up the telephone and called someone at Stanford Mexico to deliver to

Troice the insurance "safety and soundness" letters from Defendants BMB and Willis, attached as Exhibit "4". Troice received said letters from Defendants BMB and Willis and relied on said letters regarding the stability and safety of his investments in SIB. In reliance on said letters, Troice continued to reinvest more money into the CDs by repurchasing CDs every year over the years 1997-2009. Had he been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for his investments whatsoever, Troice never would have purchased CDs from SIB.

141. Over the years Troice maintained an excellent relationship with Nanes, considered him a friend, and saw him regularly. In 2008, with the world financial markets in disarray, Troice asked Nanes about the strength of SIB and Nanes responded that SIB was in excellent condition and that because the bank was not a regular commercial bank it was able to continue to pay higher interest rates. Troice even met with Nanes at 9:00 am on February 17, 2009, the very day the SEC intervened into Stanford Financial. When the talk again turned to SIB, Nanes once again reassured Troice that everything was well with the bank and that the bank was solid. Of course, Nanes knew full well on that day and before that the bank was facing massive liquidity issues and had ceased making transfers of funds to clients and was under SEC investigation. Nanes fled Mexico later that day.

142. **Martha Diaz** - Plaintiff Diaz and her husband invested in Stanford Financial via Stanford Mexico since approximately 1996 and had direct

dealings with Nanes every year regarding their investments in Stanford Financial because Diaz renewed her investments in the CDs on an annual basis. During those annual or semi-annual meetings with Nanes from 1996 through 2009, Nanes always convinced Diaz and her husband to invest and reinvest in (i.e., repurchase) the SIB CDs on an annual basis by touting the bank's safety and solidity and the fact that the investments were insured. In making their decisions to invest in Stanford Financial every year from 1996 to 2009, Diaz and her husband were provided with copies of the standard Stanford Financial marketing materials as well as copies of the BMB and Willis "safety and soundness" letters. Nanes himself delivered, or caused to be delivered, to Plaintiff Diaz and her husband the BMB or Willis letters every single year from 1998 through 2008, and in reliance on those letters Diaz repurchased the CDs every year. Diaz and her husband understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies, and as evidencing that their investments in SIB were insured. Diaz and her husband were never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had very limited insurance coverage that would not protect his investments. Had they been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for their investments whatsoever, Diaz never would have purchased CDs from SIB. Diaz did not sell any "covered" securities in order to purchase the SIB CDs.

143. In August 2008, Plaintiff Diaz and her son met with David Nanes because her Fixed CD was about to come due on August 25, 2008. Nanes convinced Diaz to exchange her Fixed CD for a Flex CD, and then switched it to Fixed CD 15 days later (September 9, 2008). At that time, Diaz asked Nanes whether she should diversify her investment to make sure it was protected and insured, and Nanes told her there was no reason to do so because SIB was very strong and insured. Diaz then asked what jurisdiction would apply to the SIB CDs in case of any problems, and Nanes responded that the United States because the corporate headquarters of Stanford Financial was based in Houston.

144. **Paula Gilly Flores** - Plaintiff Paula Gilly Flores("Gilly") invested her inheritance from her grandmother with Stanford Financial. On or about September 2007 SGC-Houston broker Miguel Valdez, who previously had been employed by Chase Bank in Houston where he had handled Gilly's grandmother's accounts for ten years, traveled to Puebla Mexico from Houston, Texas to meet Gilly and her mother. Valdez explained that he had joined SGC and set about trying to convince Gilly and her mother to transfer their deposit accounts in Chase, which were set to expire in October 2007, over to Stanford Financial. Valdez knew at all times that Gilly and her mother did not want to be invested in any risky instruments or in the stock market and only wanted to be invested in safe and secure, deposit investments.

145. Even though Stanford Mexico had an office in Puebla, Valdez did not want to meet with Gilly and her mother at the Stanford Mexico offices; indeed he told Gilly that Stanford Mexico sold

different products than SGC. Instead, Valdez insisted that they meet at the Hotel Villa Florida en Puebla. At that meeting, in mid-September 2007, Valdez provided Gilly and her mother with the Spanish language promotional materials for Stanford Financial and SIB similar to the ones attached hereto and represented to Gilly and her mother that (1) an investment in SIB CDs was safer than investing in U.S. banks because SIB did not make loan; (2) SIB and Stanford Financial were U.S. based businesses regulated by the U.S. Government; and (3) that an investment in SIB CDs was completely safe and secure because it was guaranteed and insured by Lloyd's. During this sales presentation in Mexico, Valdez omitted to inform Gilly that (1) SIB was not regulated by the U.S. Government; (2) her investments in SIB CDs were not insured; (3) SIB was operating illegally as an unregistered investment company (whose contracts were thus void under Section 47 of the Investment Company Act) selling unregistered securities from Houston, Texas and (4) that SIB was not invested in safe secure and liquid instruments.

146. Based on the representations made to Gilly and her mother by Valdez and via the promotional materials, including the representations and omission of material fact concerning the existence of insurance for the CDs, she and her mother decided to invest the totality of the inheritance from her grandmother in SIB CDs. On or about October 9, 2007, Gilly invested all of her inheritance in SIB CDs. Gilly did not sell any "covered" securities in order to purchase the SIB CDs.

147. **Punga Punga Financial, Ltd.** - Plaintiff Punga is a Panamian corporation whose principal place of business is in Mexico and which is wholly owned by Mexican citizens from Mexico City. In 1998, the principal of Punga was introduced to David Nanes by a friend. Nanes solicited Punga's principal as a client for Stanford Financial but he initially refused. Thereafter, and because Punga's business was located right next to Stanford Mexico's offices in Mexico City, Punga's principal saw Nanes almost daily. In 1999 Nanes finally convinced Punga's principal to invest in SIB CDs.

148. Punga thereafter received the BMB and/or Willis letters every single year that it maintained investments with Stanford Financial, and in reliance on those letters Punga Punga continued to renew (i.e., repurchase) the SIB CDs year after year from 1999 through 2009 and maintained the relationship over the years with Stanford Financial through Nanes or his assistants. Every two or three months over the next eight or nine years and until the SEC's intervention into Stanford, the principal of Punga met with Nanes to discuss Punga's investments in Stanford Financial. Every single time that they met, Nanes represented to Punga's principals that Stanford Financial and SIB were solid, insured, and were growing rapidly. Nanes promoted the SIB CDs aggressively as being fully insured.

149. Nanes took advantage of the recurring economic problems and currency devaluations in Mexico to promote and sell Stanford Financial in Mexico. Nanes even admitted to Punga's principal that in times of economic crisis in Mexico was when he "captured" the most money for Stanford Financial. Nanes's main argument for convincing

Punga to invest with Stanford Financial every year from 1999 through 2009 was that SIB was completely insured against fraud. As part of that sales pitch, at the initiation of Punga's investments in SIB CDs, and every year thereafter, Nanes sent the "safety and soundness" letters from Defendants BMB and Willis attached hereto as Exhibit "4" to Punga's principal. Punga's principals understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies, and as evidencing that their investments in SIB were insured. Punga's principals were never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had very limited insurance coverage that would not protect his investments. Had they been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for their investments whatsoever, Punga's principals never would have purchased CDs from SIB. These letters gave a great level of comfort to Punga's principal and in reliance on the letters Punga greatly increased its investments with Stanford Financial over the years by purchasing more CDs.

150. Over the years Punga's principal came to trust Nanes and they developed a friendship. On one occasion, Nanes invited Punga's principal to Miami on a private Stanford Financial jet. On that trip Punga's principal noticed that Nanes had changed a lot as a person from the time that they had first met; Nanes appeared to live in another "surreal" world of money and power. But based on

the trust and confidence that had grown between the principals of Punga and Nanes, and based on Nanes' representations and the letters from Defendants, Punga increased the amount of money it had invested in Stanford Financial. Every time one of the SIB CDs matured, Nanes met with Punga's principals to convince them to renew (i.e., repurchase) the SIB CDs. Part of Nanes' sales tactic every was to provide the BMB or Willis letters to Punga, and in reliance on those letters, Punga continued to purchase SIB CDs every year. Punga did not sell any "covered" securities in order to purchase the SIB CDs.

151. In September 2008, as the world financial crisis grew, Punga's principal met with Nanes on several occasions to discuss Stanford Financial and Nanes assured Punga's principal that Stanford Financial and SIB were "stronger than ever". Punga's CDs matured in January 2009, and Punga's principal decided not to reinvest in Stanford Financial. Nevertheless, Nanes called and urged Punga's principal to renew the CDs, even offering Punga a "preferential" interest rate. Nanes mentioned that Stanford Financial was under a vicious attack from a crazy Venezuelan (Dalmady) who was defaming Stanford Financial, but that the group was stronger than ever, and, at any rate Stanford Financial carried the insurance policies which were still in force and which protected against fraud. Nanes reminded Punga's principal of the insurance letters he had provided every year as evidence that Punga's investments in the SIB CDs were insured. Punga's principal finally succumbed to Nanes' entreaties and reinvested the CD proceeds into purchasing new SIB CDs just one week before

the SEC intervention. Even when they met on February 15, 2009, two days before the intervention, Nanes assured Punga's principal that SIB was doing well and had not been affected by the financial turmoil affecting the rest of the world.

152. **Manuel Canabal** Plaintiffs Canabal, Ferreiro and Promotora all invested in the SIB CDs through Stanford Venezuela at various times in the late 1990s and 2000s. Plaintiff Canabal's Stanford Venezuela FA always promoted the SIB CDs to Canabal and to Canabal the CDs appeared to be the only investment product offered by Stanford Financial. In making the initial decision to invest with Stanford Financial, Canabal received information, including the uniform Stanford Financial marketing materials described herein, from his Stanford FA regarding Stanford Financial's operations as a whole, and also was informed by his Stanford FA that investments in SIB were insured. Canabal relied on those statements in making the decision to invest in the CDs and in deciding to maintain his investments in SIB CDs over the years. Canabal did not sell any "covered" securities in order to purchase the SIB CDs.

153. Canabal asked his Stanford Financial Advisor if the CDs were guaranteed by the FDIC, and the advisor explained that the CDs were not FDIC insured but did carry other types of insurance, including insurance covering fraud. On several occasions over the years, Canabal's advisor delivered to Canabal the insurance "safety and soundness" letters from Defendants BMB and Willis, attached as Exhibit "4". Canabal received said letters from Defendants BMB and Willis and relied on said letters as "peace of mind" regarding the stability and

safety of his investments in SIB. Canabal understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies, and as evidencing that their investments in SIB were insured. Canabal was never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had very limited insurance coverage that would not protect his investments. Had he been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for their investments whatsoever, Canabal never would have purchased CDs from SIB.

154. **Daniel Gomez Ferreiro** Plaintiff Daniel Gomez Ferreiro ("Ferreiro") invested in Stanford Financial via Stanford Venezuela. During his meetings with his Stanford FA his advisor always convinced Ferreiro to invest and reinvest in the SIB CDs by touting the bank's safety and solidity and the fact that the investments were insured. In making his decisions to invest in Stanford Financial Ferreiro was provided with copies of the BMB and Willis "safety and soundness" letters and relied on them in making the decision to purchase and repurchase the CDs over the years. Ferreiro understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies, and as evidencing that their investments in SIB were insured. Ferreiro was never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had

very limited insurance coverage that would not protect his investments. Had he been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for their investments whatsoever, Ferreiro never would have purchased CDs from SIB. Ferreiro did not sell any "covered" securities in order to purchase the SIB CDs.

155. **Promotora Villa Marino, C.A.** - Plaintiff Promotora Villa Marino, C.A. ("Promotora") is a Venezuelan corporation whose principal place of business is in Venezuela and which is wholly owned by Venezuelan citizens from Venezuela. The principal of Promotora was solicited as a client for Stanford Financial.

156. Promotora thereafter received the BMB and/or Willis letters every single year that it maintained investments with Stanford Financial, and continued to invest in SIB CDs per the advice of its Stanford Financial Advisor and maintained the relationship over the years with Stanford Financial through its Stanford Financial Advisor. The Stanford Financial Advisor promoted the SIB CDs aggressively as being fully insured.

157. As part of the sales pitch, at the initiation of Promotora's investments in SIB CDs, and every year thereafter, Promotora's Stanford Venezuela FA sent to Promotora the "safety and soundness" letters from Defendants BMB and Willis, one of which is attached hereto as Exhibit "4" to Promotora's principal. Promotora's principals understood those letters as providing an independent endorsement of SIB by reputable insurance brokerage companies,

and as evidencing that their investments in SIB were insured. Promotora's principals were never informed that (i) Stanford actually wrote the text of the letters and that Defendants had simply rubber stamped what Stanford had sent them; or (ii) that SIB only had very limited insurance coverage that would not protect his investments. Had they been told the truth, i.e., that the letters were purely fabricated by Stanford and rubber stamped by Defendants, and that there was no insurance coverage for their investments whatsoever, Promotora's principals never would have purchased CDs from SIB. These letters gave a great level of comfort to Promotora's principal and caused Promotora to continue to invest with Stanford Financial over the years. Promotora did not sell any "covered" securities in order to purchase the SIB CDs.

VII. PLAINTIFF CLASS

158. Plaintiffs and the Class are persons who, in many cases, invested their life savings and retirement funds with Stanford Financial through SIB because they considered Stanford Financial a safe investment because it was allegedly "based" in the United States and therefore subject to U.S. laws and regulations. In reliance on Stanford Financial's fraudulently crafted "image" as a Texas-based financial services group, and in further reliance on the illusion of safety and security via Lloyd's insurance coverage fostered by Stanford Financial with the Defendants' material assistance, Plaintiffs and the Class collectively transferred billions of dollars to Stanford Financial for investment in the SIB CDs. Without the money that continually flowed into Stanford Financial on a constant basis from at

least 1995 through 2009, the Stanford Financial Ponzi scheme could not have flourished because a Ponzi scheme depends for its survival on constant infusions of new money. By their conduct alleged herein in assisting Stanford Financial to create and perpetuate the illusion of insurance coverage for investments in SIB, Defendants materially aided Stanford Financial to lure new investment money to flow into the Ponzi scheme from 1996 through 2008, thereby sustaining the Ponzi scheme and making them jointly liable for all of the losses suffered by the investors like Plaintiffs and the Class that wound up holding the Stanford Financial "bag" in February, 2009.

159. Throughout this time period, and up until the SEC intervention into Stanford Financial in February 2009, Plaintiffs and the Class continued to receive monthly account statements from Stanford Financial showing that their money had been invested in the SIB CDs and were in fact profitable. They also continued to receive SIB Annual Reports and other promotional materials, all of which omitted to inform that Stanford Financial was in reality operating an unregistered investment company operating as a Caribbean real estate development fund. Throughout this time period, and up until the SEC intervention in February 2009, Plaintiffs and others continued to receive, or were shown or informed about, the fraudulent letters from Defendants Willis and BMB attesting to SIB's security, solvency and solidity. Throughout the years, Stanford FAs uniformly used the illusion of insurance coverage for the SIB CDs in their marketing pitches to clients. At no time were Plaintiffs or the Class ever advised that Stanford

Financial had invested their money in risky, "illiquid" ventures like the Caribbean real estate development projects (although Defendants were aware of same); or that SIB had no real insurance that would protect Plaintiffs' investments (although Defendants were aware of same); or that the only "oversight" SIB was subjected to was a one man "mom and pop" audit firm in Antigua that was completely dominated by Stanford. Instead, and lacking the type of information that might be gained from a full regulatory disclosure, Plaintiffs and the Class were led to believe by Stanford Financial and Defendants that an investment in SIB was safer than any other investment in the market because it was underwritten by Lloyd's of London based on "stringent" annual risk management audits conducted by outside audit firms, all of which was false and misleading. Now Plaintiffs and the Class stand to lose all of their investments.

VIII. CLASS ALLEGATIONS

160. Plaintiffs request this case be certified as a class action pursuant to FRCP 23. Thousands of investors still had money invested in the SIB CDs and other depository accounts at Stanford Financial through SIB as of February 2009. The numbers of affected investors are so numerous that joinder of all members is impracticable. There are common questions of law and fact that are common to the class and these common questions predominate over individual issues. The Named Plaintiffs' claims are typical of the class claims. The Named Plaintiffs have no interest adverse to the interests of other members of the Class. The Named Plaintiffs will fairly and adequately protect the class' interests. The Named Plaintiffs have retained counsel experienced

and competent in the prosecution of class action and complex international securities litigation.

161. Pursuant to FRCP 23(a) and (b)(3), the Court should certify the following classes and subclasses:

i. All persons or entities that had purchased and still held CD or other depository accounts with SIB (excluding purchasers of shares in SGC's SAS mutual fund program) as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action; and

ii. Such other classes or sub-classes as the Court may determine. Excluded from the class are:

a. Defendants, and their employees and agents; and

b. Any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC, Stanford Mexico and Stanford Venezuela as those entities have been defined herein

162. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of "fraud created the market" and fraud on the regulators because Stanford's fraud could not have existed or flourished were it not for the fraud

Stanford committed on regulators around the world and the fraud Stanford committed by misleading investors into believing that their investments in SIB were insured. The Class Plaintiffs and the Class relied on the integrity of the market in deciding to invest in the SIBL CD's. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

163. Pleading in the alternative, Plaintiffs, on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all Latin American citizens and legal residents, or entities owned or controlled by Latin American citizens or legal residents, that had purchased and still held CDs or other depository accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action, and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC and Stanford Mexico or Venezuela, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of "fraud created the market" and fraud on the regulators because Stanford's fraud could not have existed or flourished were it not for the fraud

Stanford committed on regulators around the world and the fraud Stanford committed by misleading investors into believing that their investments in SIB were insured. The Class Plaintiffs and the Class relied on the integrity of the market in deciding to invest in the SIBL CD's. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

164. Pleading in the alternative only, Plaintiffs SAMUEL TROICE, MARTHA DIAZ, PAULA GILLY-FLORES and PUNGA PUNGA FINANCIAL, LTD, on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all Mexican citizens and legal residents, or entities owned or controlled by Mexican citizens or legal residents, that had purchased and still held CDs or other depository accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action, and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC and Stanford Mexico, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. Indeed, this is a case of "fraud created the market" and fraud on the

regulators because Stanford's fraud could not have existed or flourished were it not for the fraud Stanford committed on regulators around the world and the fraud Stanford committed by misleading investors into believing that their investments in SIB were insured. The Class Plaintiffs and the Class relied on the integrity of the market in deciding to invest in the SIBL CD's. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

165. Pleading in the alternative, Plaintiffs MANUEL CANABAL, DANIEL GOMEZ FERREIRO and PROMOTORA VILLA MARINO, C.A., on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all Venezuelan citizens and legal residents, or entities owned or controlled by Venezuelan citizens or legal residents, that had purchased and still held CDs or other depository accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action, and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC and Stanford Venezuela, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient

adjudication of the controversy. Indeed, this is a case of "fraud created the market" and fraud on the regulators because Stanford's fraud could not have existed or flourished were it not for the fraud Stanford committed on regulators around the world and the fraud Stanford committed by misleading investors into believing that their investments in SIB were insured. The Class Plaintiffs and the Class relied on the integrity of the market in deciding to invest in the SIBL CD's. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

166. Pleading in the alternative, Plaintiffs, on their own behalf and on behalf of a class of all those similarly situated, request that the Court certify a class composed of all investors who had purchased and still held CDs or other depository accounts with SIB as of February, 2009 and whose claims are recognized and authorized by the Receiver in the SEC Action, and who had received or were shown copies of the insurance letters issued by Defendants as described herein, and such other classes or sub-classes as the Court may determine, but excluding Defendants, and their employees and agents; and any officer, director, employee, or promoter of Stanford Financial, including SIB, SGC and Stanford Mexico or Venezuela, as those entities have been defined herein. The court should certify the class pursuant to FRCP 23(b)(3) because questions of law or fact common to the members of the class predominate over any questions affecting only the individual members, and a class action is superior to the other available methods for the fair and efficient

adjudication of the controversy. Indeed, this is a case of "fraud created the market" and fraud on the regulators because Stanford's fraud could not have existed or flourished were it not for the fraud Stanford committed on regulators around the world and the fraud Stanford committed by misleading investors into believing that their investments in SIB were insured. The Class Plaintiffs and the Class relied on the integrity of the market in deciding to invest in the SIBL CD's. Many of the investors who are class members have amounts invested which are too small to justify the cost and expense of individual litigation and can only be assisted by a class action mechanism.

IX. STATUTE OF LIMITATIONS DEFENSES

Discovery Rule/Inquiry Notice

167. The SEC filed an action against Allen Stanford and SIB et al. on February 17, 2009, and on that same day the Receiver was appointed. Plaintiffs did not discover, and could not with the exercise of reasonable diligence have discovered, the true nature of the injury caused by Stanford Financial, SIB or Defendants until then. Moreover, the wrongful acts and conspiracy by Defendants were inherently undiscoverable, and Plaintiffs were not aware of facts that would have put them on inquiry notice as to Defendants' role in Stanford's fraud until now.

X. CLASS CAUSES OF ACTION

(THE FOLLOWING CAUSES OF ACTION ARE PLEAD ON BEHALF OF ALL PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF A CLASS OF ALL OTHERS SIMILARLY SITUATED)

A. PRIMARY VIOLATIONS OF THE TEXAS SECURITIES ACT

1. SALES OF SECURITIES THROUGH UNTRUTHS OR OMISSIONS

168. Section 33(A) of the Texas Securities Act provides civil liability for persons who sell securities by means of untrue statements or omissions. As alleged by the SEC, the SIB CDs qualify as "Securities" under the relevant securities law jurisprudence. Defendants qualify as "sellers" under the Act because they acted as the soliciting agents of Stanford Financial and SIB in the chain of the selling process by communicating misleading information about SIB to the general public around the globe with the goal of selling SIB CDs, and but for Defendants' participation, Stanford Financial could not have sold the SIB CDs to Plaintiffs. In acting as Stanford Financial and/or SIB's sales agents, Defendants were motivated to serve their own financial interests or those of Stanford Financial and/or SIB.

169. Defendants sold the SIB securities to Plaintiffs using untruths or omissions. In particular, Defendants, acting as the agents of Stanford Financial and SIB, created and sent into the stream of commerce the letters described herein which informed the general public that, inter alia, SIB was "professional" and comprised of "first class business

people"; and that the Lloyd's insurance policies procured by Defendants for SIB were only issued because SIB had undergone "stringent Risk Management Review[s] conducted by an outside audit firm." These letters, which were clearly designed and intended by Defendants to be distributed to Plaintiffs and others as potential investors in SIB, contain untruths and omissions of material facts directed at Plaintiffs and others with the purpose of promoting and selling SIB and its CDs to Plaintiffs and others. Defendants had no reasonable basis to make these statements because they knew or should have known (and were therefore reckless in communicating information to the contrary) that SIB did not undergo "stringent" annual Risk Management reviews, and that any reviews were not conducted by an outside audit firm, but rather were conducted by a one man shop in Florida that performed a limited scope review in 2003 that resulted in a flimsy three page risk management report full of disclaimers. Furthermore, Defendants omitted to disclose in the letters that the text of the letters was in fact written by Stanford and not by Defendants and that Defendants had simply printed and signed the letters on Defendants' letterhead at Stanford's request and also omitted to disclose the insurance policy limits for each of the policies listed in the letters, thereby making the letters misleading.[17]

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[17] An omitted fact is material if there is a substantial likelihood that it would have assumed actual significance in the deliberations of a reasonable investor, in that it would have been viewed by the reasonable investor as significantly altering the total mix of available information used in deciding whether to invest. *See, e.g., Bridwell v. State*, S.W.3d, 2008 WL 467271 (Tex. App.--Dallas 2008, no pet. hist.).

Defendants knew all of this, but issued the Stanford-written letters anyway from 1996 through 2008 in order to lure investors like Plaintiffs to purchase the bogus offshore CDs.

170. At the very least, in agreeing to place Stanford-written text on their corporate letterheads and creating and submitting these letters into the stream of commerce to be directed at Plaintiffs, Defendants intentionally or recklessly omitted material facts, including the scope of coverage of the referenced insurance policies, and the fact that Defendants had "no idea" one way or the other when, or even whether, the alleged "Risk Management reviews" were conducted, or whether they were "stringent" by any definition. In fact, had Defendants ever bothered to actually read the risk management review, they would have known that the review was perfunctory and extremely limited in scope and the resulting report was full of disclaimers.

171. Furthermore, primary liability for violations of the Texas Securities Act attaches to Defendants based on a duty to disclose that arose when said Defendants chose to speak to the public regarding Stanford Financial and SIB. In choosing to accept Stanford Financial's and SIB's request to act as their agents in making and circulating the representations concerning SIB insurance contained in the "safety and soundness" letters described herein, Defendants assumed a duty to disclose **all** of the information they knew about Stanford Financial and SIB, including the amounts of the insurance policies, and not to make partial disclosures that might, and did, convey a false impression about SIB. A Defendant may not deal in "half-truths" and Defendants had more access to information

regarding Stanford and SIB than Plaintiffs did, and clearly had an incentive to market and sell SIB to Plaintiffs so that SIB, and hence Stanford Financial, could continue in business and continue contracting Defendants' services. Moreover, Defendants were clearly on notice that the investing public at large (and particularly investors in Latin America), to whom these letters were circulated, would and did rely on Defendants' statements in making their investment decisions concerning buying the CDs offered by Stanford Financial and SIB; indeed the very purpose of the letters, known to Defendants, was to influence the investors' decision-making process in terms of SIB.

172. As a result of Defendants' conduct, Plaintiffs have lost their investments and are entitled to the statutory remedy of rescission. Alternatively, Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments as stated in their last SIB account statement and the amount Plaintiffs may receive from the receivership distribution.

B. AIDING AND ABETTING VIOLATIONS OF THE TEXAS SECURITIES ACT

1. SALES OF UNREGISTERED SECURITIES

173. Defendants are liable as "aiders" for sales of unregistered securities to Plaintiffs. In particular, by their actions described herein, Defendants provided substantial assistance to SIB and Stanford Financial in the marketing and sales process for the sale of the CDs to Plaintiffs and others and materially aided Stanford Financial and SIB to sell unregistered securities to Plaintiffs from, by and through Texas.

As argued by the SEC in its original Complaint, the CDs offered and sold by Stanford Financial and SIB, with Defendants' participation, constitute "securities" under the relevant securities law jurisprudence, primarily the Reves test, precisely because the CDs were not insured by the FDIC, or guaranteed by any similar government regulatory insurance regime. By agreeing to assist Stanford Financial and SIB to sell and promote investment in these securities products, Defendants actively joined the Stanford Financial sales force and therefore knew or should have known that they were acting as links in the chain of selling unregistered securities to Plaintiffs from, by and through Texas. But for Defendants' participation, Stanford Financial and SIB could not have sold unregistered securities to Plaintiffs from, by and through Texas.

174. Defendants had general awareness that they were assisting in the sale of unregistered securities from, by and through Texas. Defendants knew that Stanford Financial was based in Texas and was selling CDs issued by an offshore bank it controlled from Texas, and knew that SIB did not function as a regular bank making loans but, rather, invested the CD proceeds in a private investment portfolio. Defendants also knew that the CDs being peddled to Latin Americans and other non-U.S. citizens and residents directly from Houston, Texas had not been registered with the SEC or TSSB, because Defendants knew that SIB had filed for a limited Reg. D exemption for certain "accredited" U.S. investors only.

175. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct in blindly signing letters prepared by an

employee at Stanford Financial in Houston attesting to the safety and soundness of SIB with full knowledge that the purpose of the letters was to lure more investors to purchase unregistered securities from SIB. In assisting a Houston-based enterprise in the sale of unregistered securities, Defendants were, at the very least, subjectively conscious of a risk of illegality. None of the CDs sold to Plaintiffs were ever registered with the Texas State Securities Board and therefore they were sold to Plaintiffs as unregistered securities in violation of the Texas Securities Act. In assisting Stanford Financial and SIB in the sales and marketing process to sell the unregistered securities from, by and through Texas, Defendants acted intentionally or with reckless disregard for the truth and the law. As a result of Defendants' conduct in materially aiding Stanford Financial and SIB to sell unregistered securities from, by and through Texas, Plaintiffs have lost their investments and are entitled to the statutory remedy of rescission. In the alternative, Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

176. Moreover, and despite SGC's scheme to evade compliance with the Texas Act by claiming a Reg D exemption, the global offering of CDs by Houston-based Stanford Financial to "accredited" U.S. investors was in fact an unregistered public offering made in violation of Article 581 of the Texas Act. It was an integrated offering under Texas securities laws, and, on information and belief,

involved each of the following factors that made it a public offering and not a private offering exempt from registration:

a. The integrated offering involved general solicitation. This general solicitation by Stanford Financial through SGC and its U.S. affiliates, agents and brokers, as well by the foreign financial advisors, included general public advertisements, publicly distributed magazine articles and other communications and media published in print in Houston, Texas and distributed broadly for general distribution in the United States and abroad to offerees and purchasers of the CDs.

b. The integrated offering involved general solicitation through television advertisements, including advertisements broadcast in Texas and Florida, of Stanford Financial's products, including the CDs.

c. The integrated offering involved seminars and meetings conducted in the United States (including Texas and Florida), Mexico and Venezuela and elsewhere in Latin America. The integrated offering was conducted through the use of sales seminars, "road shows," and meetings directed at potential offerees and purchasers.

d. The integrated offering involved offers to thousands of offerees and purchases by thousands of offerees involving sums of money far in excess of that disclosed to the SEC in SIB's Form D filing with the SEC. The integrated offering involved offers to, and purchases by, at least thousands of Texas and

Florida residents or those otherwise subject to Texas or Florida law, as well as offers and sales to Mexican and Venezuelan residents in the Texas and Florida offices of Stanford Financial.

e. The aggregate size of the sales of CDs during this period was approximately $7.2 billion. The aggregate size of the sales in Texas from this period was at least several hundred millions of dollars. The aggregate size of the sales in Florida from this period was at least several hundred millions of dollars.

f. The offering was made to investors with whom Stanford Financial/SGC had no pre- existing relationship, through brokers or affiliates of Stanford Financial who were paid substantial and excessive undisclosed commissions in connection with the CDs.

g. The offering was made to persons who did not qualify as "accredited United States investors"; and far more than 35 persons who did not qualify as "accredited United States investors" purchased the CDs; indeed the vast majority, at least $6 billion of the CDs, were sold to foreign citizens that did not qualify as "accredited United States investors".

2. SALES OF SECURITIES BY UNREGISTERED DEALERS

177. Defendants aided and abetted SIB and Stanford Financial in the sale of securities to Plaintiffs from, by and through the State of Texas without being registered as a dealer, in violation of Sections 12(A), 33(A)(1), and 33(F)(2) of the Texas Securities Act. Specifically, and as alleged herein,

Defendants knew or should have known that Stanford Financial was selling securities from, by and through Texas to investors and then pooling its customers' money together to make illiquid, speculative investments. Stanford Financial made these sales without registering with the Texas State Securities Board as a dealer under Section 12(A).

178. Defendants intentionally and actively aided and abetted Stanford Financial to operate in and from Texas to sell securities from, by, and through Texas, by means of the conduct described herein. With full knowledge that Stanford Financial was, directly or through its web of alter ego companies, including SIB, acting as an unregistered securities "dealer" in Texas selling securities from, by, and through Texas, and that Stanford Financial/SIB were being operated and "run" from Texas, Defendants aided and abetted, materially and substantially assisted, and perpetuated Stanford Financial and SIB's violations of the Texas Securities Act by continuing to provide the letters herein described for the known purpose of luring new customers like Plaintiffs to Stanford Financial and selling them the worthless CDs.

179. Defendants had general awareness that they were assisting the sales by an unregistered "dealer" of unregistered securities from, by and through Texas. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct in blindly signing letters written by Stanford Financial employees attesting to the safety and soundness of SIB with full knowledge that the purpose of the letters was to lure more investors to invest in Stanford Financial/SIB. In assisting the sale of securities through a Houston-based

enterprise, Defendants were, at the very least, subjectively conscious of a risk of illegality. In performing the acts described herein to aid and abet the sale of securities in Texas by an unregistered dealer, Defendants acted with the intent to perpetuate the sale of securities by an unregistered dealer, or acted with reckless disregard for the truth or the law. In fact, in their zeal to assist Stanford Financial, acting through an offshore bank operating completely outside the regulatory purview of U.S. securities and banking laws, to sell securities from, by, and through Texas, Defendants acted with wanton and arrogant disregard for the protections afforded by the Texas Securities Act. As a result of Defendants' conduct in aiding and abetting the sale of securities in Texas by unregistered securities dealers, Plaintiffs have lost their investments and are entitled to the statutory remedy of rescission. In the alternative, Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

3. UNTRUTH OR OMISSION

180. Defendants, acting with intent to deceive or with reckless disregard for the truth or the law, materially and substantially aided Stanford Financial and SIB and their principals in the sale of securities through the use of untrue representations or materially misleading omissions, and also aided and abetted the fraudulent practices of registered investment advisers in violation of the TSA. In particular, and as set forth in the Davis Plea, Stanford Financial was a massive Ponzi scheme that

was perpetuated by the continued sales of the SIB CDs to unsuspecting investors like Plaintiffs. Stanford Financial led Plaintiffs, verbally and through written marketing materials prepared and disseminated via Stanford Financial's Houston office (including Defendants "safety and soundness" letters), to believe that their money was being invested in safe, liquid investments that were insured, which was a material misstatement because the money was not invested in safe, liquid and fully insured investments, but rather was pooled together with other investors' money and used to finance Stanford Financial's principals' profligate lifestyles and to invest in long term, illiquid and high risk investments including real estate development projects in Antigua and elsewhere in the Caribbean. Moreover, Stanford Financial omitted to inform Plaintiffs that it was selling them unregistered securities and that it was operating as an unregistered, uninsured, illegal Caribbean real estate development investment company fund in violation of the Investment Company Act and the Texas Securities Act.

181. Defendants had general awareness that they were involved in improper activity and that they were assisting the sale of unregistered securities from, by and through Texas. With knowledge that Stanford Financial and SIB, acting in concert as an unregistered investment company, were misleading investors about the scope and nature of its investments (including not disclosing the scope of investments in speculative Caribbean real estate development projects) as well as the scope and nature of insurance coverage and the extent of oversight over SIB, and with reckless disregard for

the truth and the law, Defendants provided substantial assistance to SIB and Stanford Financial in the marketing and sales process, including the circulation of the letters described herein, and thereby materially aided the sales of securities through the use of untruths and materially misleading omissions. Defendants were all subjectively aware of, and absolutely indifferent to, the risk posed by their conduct in blindly signing letters attesting to the safety and soundness of SIB with full knowledge that the purpose of the letters was to lure more investors to purchase SIB's securities. In assisting the sale of securities through a Houston-based enterprise, Defendants were, at the very least, subjectively conscious of a risk of illegality.

182. All of the Defendants caused the fraudulent insurance letters to be generated, distributed through Stanford Financial's offices in Houston, Texas and circulated to Plaintiffs and the Class of investors, with full knowledge, or with reckless disregard for the truth, that the contents of the letters were false and misleading, and that the purpose of the letters was to deceive investors about the scope and nature of insurance coverage as well as the degree of oversight of SIB required to obtain the insurance coverage, in order to lure investors like Plaintiffs and the Class to invest money in the SIB CDs through Stanford Financial. Said conduct was designed to perpetuate the Stanford Financial "myth" regarding the safety and security of the SIB CDs, and to support the marketing, promotional and sales activities described herein. In short, Defendants' actions as described herein allowed Stanford Financial and SIB to continue to sell

securities to Plaintiffs from, by and through Texas using untruths and materially misleading omissions.

183. In performing the acts described herein to aid and abet the sale of securities through the use of untruths and materially misleading omissions, Defendants acted with the intent to perpetuate the sale of securities by Stanford Financial, or acted with reckless disregard for the truth or the law. In fact, Defendants acted with wanton and arrogant disregard for the truth and for the protections afforded by the Texas Securities Act by engaging in the conduct described herein. Defendants' actions in aiding and abetting Stanford Financial's fraud caused Plaintiffs to enter into transactions or maintain their investments with SIB. As a result of Defendants' conduct in aiding and abetting the sale of securities from, by and through Texas using untruths and materially misleading omissions, Plaintiffs have lost their investments and are entitled to the statutory remedy of rescission. In the alternative, Defendants' violations of the Texas Securities Act are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the receivership distribution.

4. CO-CONSPIRATOR LIABILITY

184. Defendants are jointly and severally liable as co-conspirators for Stanford Financial and SIB's primary violations of the Texas Securities Act. In particular, Defendants knowingly combined together and with others at Stanford Financial to assist Stanford Financial to sell unregistered securities from, by and through the State of Texas using

untrue representations or materially misleading omissions pertaining to insurance coverage for SIB. As described herein, Defendants took various overt acts designed to assist Stanford Financial to accomplish the goal of selling CDs from, by and through the State of Texas and operate as an unregistered securities dealer selling unregistered securities from Texas. One of those acts was the Defendants' agreement with Stanford Financial that Defendants would sign the letters at issue in this case on Defendants' own letterhead with full knowledge that (1) the text of the letters had been prepared by Stanford Financial and (2) that the contents of the letter were misleading and omitted material facts. Defendants' conspiracy with Stanford Financial to violate the Texas Securities Act is a proximate cause of rescission and/or actual damages to Plaintiffs, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

C. PARTICIPATION IN A FRAUDULENT SCHEME

185. By their conduct described herein, Defendants aided and abetted and participated with Stanford Financial and SIB in a fraudulent scheme, making Defendants directly liable for fraud. In particular, Defendants made the conscious decision to participate in the scheme by joining the Stanford Financial sales force to market, promote and advertise SIB to prospective clients in order to assist and enable Stanford Financial to continue to sell SIB CDs based on the misrepresentations that investments in SIB were fully insured because SIB was subject to "stringent" audits and risk

management reviews. Defendants knew at all times that this statement was false, yet they signed the letters anyway and allowed said letters to be distributed to Stanford Financial clients with full knowledge that the letters were being used to generate more investments in Stanford Financial. Defendants' actions in participating in the fraudulent scheme are a proximate cause of actual damages to Plaintiffs, being the difference between their investments in Stanford Financial as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

D. CIVIL CONSPIRACY

186. Defendants conspired with each other and with Allen Stanford, SIB, Stanford Financial, SGC, and others to commit the wrongful conduct described herein, including fraud and violations of the Texas Securities Act. Defendants are each responsible for all wrongdoing done by each other and the other members of the conspiracy, including Allen Stanford, SIB, Stanford Financial, SGC, and others, in furtherance of the unlawful conspiracy and enterprise.

187. Together with Allen Stanford, SIB, Stanford Financial, SGC, and others, the Defendants conceived, participated in, and implemented a common enterprise to use insurance as a marketing tool to sell SIB CDs for the pecuniary benefit of Stanford and Stanford Financial and, thereby, Defendants. The object of the conspiracy was to market and promote Stanford Financial and SIB and so assist said entities to sell the SIB CDs throughout the world using untruths and omissions of material

facts pertaining to insurance coverage for SIB. There was a meeting of the minds between all Defendants and Allen Stanford, SIB, Stanford Financial, SGC, and others as to the object to be accomplished, being the sale of SIB CDs, and the means for carrying out the scheme, namely the creation and circulation of the letters described herein to facilitate the sale of the CDs to unsuspecting investors such as Plaintiffs.

188. During all relevant times, Defendants, in furtherance of the conspiracy and/or aiding or abetting Allen Stanford, SIB, Stanford Financial, SGC, and others in furtherance of the common enterprise, engaged in specific overt acts as described herein, being the creation and transmittal of the "safety and soundness" letters into the stream of commerce. Each of the Defendants engaged in overt acts in furtherance of the Stanford Financial CD conspiracy and effectuated their illicit scheme through and with the assistance and cooperation of Allen Stanford, SIB, Stanford Financial, SGC, and others.

189. Defendants conspired to conduct, and participated in conduct including violations of securities laws and fraud. To wit, over the span of over ten years, Defendants, in conspiracy with Allen Stanford, SIB, Stanford Financial, SGC, and others, knowingly participated in marketing and promoting the sale, from, by and through Texas, of the SIB CDs as described herein. Defendants' participation in the conspiracy proximately caused Plaintiffs to lose their investments and Defendants are jointly and severally liable for the conduct of Allen Stanford, SIB, Stanford Financial, SGC, and others and the harm said companies and individuals caused to Plaintiffs and the Class.

XI. INDIVIDUAL CAUSES OF ACTION

(THE FOLLOWING CAUSES OF ACTION ARE PLEAD AGAINST ALL DEFENDANTS ON BEHALF OF PLAINTIFFS TROICE, DIAZ, PUNGA, CANABAL, FERREIRO AND PROMOTORA INDIVIDUALLY ONLY)

A. MISREPRESENTING THE BENEFITS OF INSURANCE POLICIES — TEX. INS. CODE § 541.051(1).

190. Defendants committed unfair or deceptive acts or practices in the business of insurance when they made, issued, and circulated statements misrepresenting the benefits or advantages promised by an insurance policy. In the alternative, the Defendants caused such statements to be made, issued or circulated. Defendants' unfair or deceptive acts and practices were a producing cause of actual damages to the Plaintiffs. Defendants are liable to the Plaintiffs for the actual damages sustained by the Plaintiffs. Defendants knowingly committed the complained of acts and are therefore liable to the Plaintiffs for treble damages.

B. MISREPRESENTING THE NAME OR TITLE OF INSURANCE POLICIES — TEX INS. CODE § 541.051(4)

191. Defendants committed an unfair or deceptive act or practice in the business of insurance when they used a name or title of a policy or class of policies that misrepresented the true nature of the policy or class of policies. Defendants' unfair or deceptive acts and practices were a producing cause of actual damages to the Plaintiffs. Defendants are liable to the Plaintiffs for the actual damages sustained by the Plaintiffs. Defendants knowingly

committed the complained of acts and are therefore liable to the Plaintiffs for treble damages.

C. FALSE INFORMATION AND ADVERTISING —TEX. INS. CODE § 541.052.

192. Defendants committed an unfair or deceptive act or practice in the business of insurance when they made, published, disseminated, circulated, and placed before the public certain advertisements, announcements, and statements. These advertisements, announcements, and statements contained untrue, deceptive and misleading assertions, representations and statements regarding the business of insurance and regarding a person in the conduct of the person's insurance business. In the alternative, the Defendants caused such statements to be published, disseminated, circulated, and placed before the public. Defendants' unfair or deceptive acts and practices were a producing cause of actual damages to the Plaintiffs. Defendants are liable to the Plaintiffs for the actual damages sustained by the Plaintiffs. Defendants knowingly committed the complained of acts and are therefore liable to the Plaintiffs for treble damages.

D. MISREPRESENTATION OF A POLICY OF INSURANCE — TEX. INS. CODE § 541.061.

193. Defendants committed an unfair or deceptive act or practice in the business of insurance by misrepresenting insurance policies when they made untrue statements of material fact, failed to state material facts necessary to make other statements not misleading considering the circumstances under which the statements were

made, and making statements in a manner that would mislead a reasonably prudent person to a false conclusion of material fact. Defendants' unfair or deceptive acts and practices were a producing cause of actual damages to the Plaintiffs. Defendants are liable to the Plaintiffs for the actual damages sustained by the Plaintiffs. Defendants knowingly committed the complained of acts and are therefore liable to the Plaintiffs for treble damages.

E. COMMON LAW FRAUD

194. Defendants' representations as described herein and contained in the "safety and soundness" letters attached hereto as Exhibit "4" constitute common law fraud, which caused Plaintiffs Troice, Diaz, Punga, Canabal, Ferreiro and Promotora damages for which they should recover by law. Defendants, in the course of their business relationships with Stanford Financial, made material representations and omitted material facts in the insurance endorsement letters which Defendants knew and intended, or had reason to expect, would eventually be transmitted to Stanford Financial investors such as Plaintiffs. Defendants and their employees and agents knowingly and intentionally made the misrepresentations or omissions contained in the "safety and soundness" letters, and/or recklessly made the representations and omissions contained in said letters as positive assertions without any knowledge of their truth. Acting on behalf of Stanford Financial and at its behest, Defendants created and transmitted the letters with the intention that they reach investors like Plaintiffs and with the intention that investors like Plaintiffs act upon the representations and omissions by investing in, or continuing to maintain

investments in, SIB CDs. Plaintiffs received the "safety and soundness" letters created and transmitted by Defendants and justifiably relied upon them, and based upon them and the information provided by Stanford Financial, formed the belief that their investments in the SIB CDs were insured. As a direct and proximate result of Plaintiffs' reliance on Defendants' fraudulent misrepresentations and omissions, Plaintiff suffered damages, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

F. NEGLIGENT MISREPRESENTATION

195. Defendant's representations as described herein and contained in the "safety and soundness" letters attached hereto as Exhibit "4" constitute negligent misrepresentations, which caused Plaintiffs Troice, Diaz, Punga, Canabal, Ferreiro and Promotora damages for which they should recover by law. Defendants, in the course of their business relationships with Stanford Financial in which Defendants had a pecuniary interest, supplied false information to Stanford Financial with full knowledge, and indeed intending, or in the alternative fully expecting, that said information would be transmitted to investors like Plaintiffs Troice, Diaz, Punga, Canabal, Ferreiro and Promotora, who in turn would rely on and be guided by said information in making their own investment decisions. Defendants and their employees and agents did not exercise reasonable care or competence in obtaining or communicating the false information to Plaintiffs via Stanford Financial. Plaintiffs Troice, Diaz and Punga, Canabal, Feriero,

and Promotora all received and relied on the "safety and soundness" letters transmitted by Defendants and were justified in relying on Defendants' false representations contained therein. As a direct and proximate result of Plaintiffs' reliance on Defendants' negligent misrepresentations, Plaintiff suffered damages, being the difference between their investments in SIB as stated in their last account statement and the amount Plaintiffs may receive from the Receivership distribution.

G. NEGLIGENCE/GROSS NEGLIGENCE

196. In the alternative, Defendants committed various acts and/or omissions of negligence which were a proximate cause of Plaintiffs' damages. Such acts and/or omissions violated the standard of care and the duty owed by an insurance broker, agent or consultant or risk manager exercising reasonable prudence to ensure that insurance letters sent to third parties provide an accurate and proper description of the type and amounts of existing insurance coverages available to its client, as well as the type of professional services the insurance broker, agent or consultant or risk manager provides to its client.

197. Each of these acts and/or omissions, singularly or in combination with others, constitute negligence and each proximately caused the incident made the basis of this action and damages sustained by Plaintiffs. Moreover, the negligence of Defendants in violating the standard of care, as set out above, constitutes negligence as a matter of law.

198. Defendants' actions and inaction also constitute gross negligence. Defendants' wrongful acts were aggravated by the kind of conduct which,

when viewed objectively from Defendants' perspective at the time the acts occurred, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiffs and others. Defendants were subjectively aware of the risks involved, but proceeded with conscious indifference to their duties and to the rights and welfare of Plaintiffs. As a result Plaintiffs seek exemplary damages for Defendants' gross negligence.

H. NEGLIGENT RETENTION/NEGLIGENT SUPERVISION

199. Defendants are directly liable to Plaintiffs for negligent retention and supervision of their employees Winter and Barnoucky. At all times described herein, Winter and Barnoucky were employees of BMB and Willis, respectively. Defendants owed a duty to Plaintiffs, as recipients of the letters in issue, to use ordinary care in the hiring, supervision and retention of their agents and employees. Defendants knew or should have known that Winter and Barnoucky were preparing, signing and transmitting the "safety and soundness" letters to Plaintiffs and other Stanford Financial clients, and knew or should have known the contents and purpose of the letters. Moreover BMB knew or should have known that Winters also served on the SIB Board of Directors. As a result, Defendants breached their duty owed to Plaintiffs by not exercising ordinary care in the hiring, supervision and retention of Winters and Barnoucky. Defendants' breach of their duties and failure to supervise has proximately caused damages to Plaintiffs.

XII. JOINT ENTERPRISE/SINGLE BUSINESS ENTERPRISE

200. A joint enterprise or single business enterprise existed between the various companies within the Stanford Financial group, all of which operated as, and were marketed and sold to the investing public as, Stanford Financial. The joint enterprise or single business enterprise consisted of, inter alia, SGC, SIB, SCM, Stanford Trust Louisiana, Stanford Trust Antigua, Stanford Group Mexico, Stanford Fondos, Stanford Venezuela, and Stanford Fiduciary Investor Services. There existed an express or implied agreement between the above described entities and their principals concerning the establishment and administration of the joint enterprise/single business enterprise; a common purpose to be carried out by the above described entities and their principals, being the reaping of fees and profits from the illicit activities of the joint enterprise/single business enterprise; a community of pecuniary interest among the above described entities and their principals; and the above described entities and their principals shared in the management and direction of the joint enterprise/single business enterprise. Thus, a joint enterprise or single business enterprise existed between and among the above described entities and their principals, which is responsible for the fraudulent acts described herein, making them all jointly and severally liable for the fraudulent acts described herein.

201. A joint enterprise or single business enterprise (at least for jurisdictional purposes) existed between the various companies within the Willis Group that provided services to Stanford

Financial. Willis Group, Willis London, Willis Colorado, and other Willis entities operate as a joint enterprise or single business enterprise. All of the companies within the Willis group centrally report and share resources and allocate costs across business segments as opposed to across corporate lines. Indeed the chief executive officers of the Willis group of companies carry titles like ""Group General Counsel" (Donald Bailey); "Group President" (Grahame J. Millwater); "Group Chief Financial Officer" (Patrick Regan); Group Director of Human Resources (Susan Sztuka); and "Group Chief Operating Officer" (Timothy D. Wright). There existed an express or implied agreement between the above described entities and their principals concerning the establishment and administration of the joint enterprise/single business enterprise; a common purpose to be carried out by the above described entities and their principals, being the reaping of fees and profits from the illicit activities of the joint enterprise/single business enterprise; a community of pecuniary interest among the above described entities and their principals; and the above described entities and their principals shared in the management and direction of the joint enterprise/single business enterprise. Indeed Willis Group, Willis London, and Willis Colorado actually agreed upon a fixed fee split between them for servicing the Stanford account, with 13% to Willis London; 6% to Willis Group; and 1% to Willis Colorado. Thus, a joint enterprise or single business enterprise existed between and among the above described entities and their principals, which is responsible for the fraudulent acts described herein, making them all jointly and severally liable for the fraudulent acts described herein.

XIII. ALTER EGO

202. Defendant Willis Group is directly liable for the acts and omissions of Willis London as described herein for the reason that Willis London is the alter ego of Willis Group and a conduit by which Willis Group conducted the business, including the schemes, described herein. Specifically, Willis Group owns, controls, and dominates Willis London to such an extent that Willis London has no separate interests of its own and in reality functions as a mere division, instrumentality or branch of Willis Group. Indeed Willis Group and all of its subsidiaries, including Willis London and Willis Colorado, operate as one single unified worldwide business unit or single business enterprise, all operating under the Willis Group brand, international trademark or tradename and logo, which is prominently displayed on all of the Willis Group entities' correspondence including the "safety and soundness" Letters described herein. Willis Group controls the manner in which its subsidiaries, such as Willis London and Willis Colorado, are perceived by the public, including controlling said entities' use of the Willis brand name, and therefore intentionally creates the impression in the minds of third parties that Willis is one unified, global entity that acts as a single unit. Indeed Willis Group's own website touts its "Glocal" approach to client service, in which Willis Group "combines" its global resources to offer the "full benefit of every service that Willis offers" worldwide.

203. As part of its global branding strategy, Willis Group and all of its subsidiaries operate as a single economic unit under a "One Flag culture" centered on its Client Advocate and Glocal service model, and

as a result of those business strategies Willis Group effectively dominates, formulates, directs and controls all of its subsidiaries', including Willis London and Willis Colorado's, operations under the Willis worldwide umbrella, creating an extensive overlap of corporate and operational and public perceptional interdependency. Willis' "One Flag" approach "guarantees" that all of Willis' worldwide employees, wherever they are located, "work as part of one cohesive team." For all effective purposes, and certainly for purposes of this lawsuit, Willis London, Willis Colorado and Willis Group are one and the same because that is the perception that Willis seeks to create in the minds of third parties worldwide, including Plaintiffs.

204. Furthermore, the entities within the Stanford Financial group of companies, including SIB, SGC, STC, Stanford Mexico, and Stanford Venezuela, all acted as the alter ego of each other and of Allen Stanford, and Plaintiffs hereby adopt the alter ego arguments made by the U.S. receiver in his Response to the Antiguan Liquidators' December 3 Supplemental Brief, in the related case pending before this Court styled *In re Stanford International Bank Ltd.*, C.A. No. 3-09- CV-0721-N (docket #61) at pps. 11-16.

XIV. AGENCY

205. Defendants acted at all times as the agents of Stanford Financial and SIB. In agreeing to sign the "safety and soundness" letters as Stanford Financial's insurance brokers, Defendants agreed to serve as Stanford Financial's agents in the marketing process for the sales of the SIB CDs. In preparing the text of the "safety and soundness"

letters and asking Defendants to execute them for subsequent distribution to Plaintiffs and the Class, Stanford Financial authorized Defendants to act for them and subject to their control. As such, Stanford Financial had the right to control both the means and the details of Defendants' actions with respect to the "safety and soundness" letters. Nanes acted at all times as an agent of Stanford Financial in Mexico in operating and managing Stanford Mexico with the sole objective of promoting and selling the Stanford Financial CD products in Mexico. Defendants Willis and BMB acted as the agents of Stanford Financial and SIB in creating and circulating the letters described herein with the sole objective of promoting and selling Stanford Financial and SIB and their products worldwide.

206. Furthermore Defendant Willis Colorado and Baranoucky acted at all times as the agent(s) of Willis London and Willis Group in dealing with Stanford Financial, including with respect to their general and specific jurisdictional contacts with the State of Texas, under the theories of actual, apparent and agency by estoppel. Defendant Willis London, in turn, acted at all times as the agent(s) of Willis Group, including with respect to their general and specific jurisdictional contacts with the State of Texas, under the theories of actual, apparent and agency by estoppel. Willis London acts as the general agent of Willis Group and effectuates and carries out all of Willis Group's business. Moreover, Willis Group has purposefully created the appearance of authority that Willis Colorado and Baranoucky act on behalf of Willis Group by allowing Willis Colorado (as well as its other subsidiary companies) and Baranoucky to

prominently display the Willis Group brand, international trademark or tradename and logo on all of their correspondence. Willis Group controls the manner in which its subsidiaries, such as Willis Colorado, are perceived by the public and therefore intentionally creates the impression in the minds of third parties that Willis is one unified, global entity that acts as a single unit. Indeed Willis Group's own website touts its "Glocal" approach to client service, in which Willis Group "combines" its global resources to offer the "full benefit of every service that Willis offers" worldwide. As an employee of this global, cohesive and consolidated single business joint enterprise, Baranoucky also acted as a direct agent of Willis Group with regard to the allegations made herein.

XV. RESPONDEAT SUPERIOR

207. Defendants Willis and BMB are liable for the tortious acts of their employees, including without limitation, Amy S. Baranoucky (Willis) and Robert S. Winter (BMB), and all contacts with the State of Texas by those employees should be attributed to the specific employees' principals for purposes of the personal jurisdiction analysis. Amy S. Baranoucky [Willis] and Robert S. Winter [BMB] were acting within the course and scope of their employment with Defendants, and in furtherance of their respective principals' businesses, when they engaged in the wrongful conduct described herein. David Nanes was at all times acting within the course and scope of his employment with Houston-based SGC and/or Stanford Financial, and in furtherance of said companies' respective businesses, when he engaged in the wrongful conduct described herein.

XVI. ACTUAL DAMAGES

208. Plaintiffs and the Class have suffered the loss of well in excess of $7 billion that was proximately caused by the wrongful conduct of Defendants described herein. Because a Ponzi scheme depends for its survival on constant and continuous infusions of new money to pay off old investors and so lure new ones, Defendants are liable for all of the losses suffered by Plaintiffs and the Class because Defendants served as key links in the Ponzi sales and marketing chain by issuing the letters described herein in order to assist Stanford Financial lure new infusions of investor money. But for Stanford Financial's false assurances regarding insurance reinforced by these letters, countless investors like Plaintiffs would never have invested in the CDs and therefore the Ponzi scheme would have collapsed. Instead, and as a direct result of the utilization of Defendants' endorsement letters, Stanford grew exponentially between 1999 and 2007. Moreover Defendants are jointly and severally liable for the injury caused by Allen Stanford, Stanford Financial and SIB under Texas common law of joint and several liability as well as under the Texas Securities Act. In addition, Plaintiffs are entitled to recover their just and reasonable attorneys' fees, for it would be inequitable not to award such fees to them. Plaintiffs have retained the undersigned attorneys and have agreed to pay them a reasonable attorneys' fee for their work.

209. The exact amount of maximum damages proximately caused by Defendants' wrongful conduct is unknown, but Plaintiffs believe that those damages exceed $7 billion.

XVII. PUNITIVE DAMAGES

210. The wrongful conduct set forth herein constitutes fraud or malice, willful acts or omissions, or gross neglect within the meaning of §41.003, Tex. Civ. Prac. & Rem. Code. Plaintiffs are entitled to recover punitive damages in an amount necessary to punish the Defendants and to deter similar conduct of others in the future.

211. All conditions precedent to filing this Complaint have been met.

XVIII. JURY DEMAND

212. Plaintiffs demand a trial by jury.

PRAYER

WHEREFORE, Plaintiffs pray the Defendants be summoned to answer this Complaint, that this action be certified as a class action, and that the case be tried before a jury and that upon final judgment the classes and sub-classes as set forth in each cause of action hereof recover their damages as alleged herein, including their actual damages, punitive damages, and their costs and expenses of suit, including reasonable attorneys' fees. Plaintiffs pray for such other relief to which they may be justly entitled.

Respectfully submitted,	
CASTILLO SNYDER, P.C. 300 Convent Street, Suite 1020 San Antonio, Texas 78205 Telephone: (210) 630-4200 Facsimile: (210) 630-4210	**STRASBURGER & PRICE, LLP** 300 Convent Street, Suite 900 San Antonio, Texas 78205 Telephone: (210) 250-6000 Facsimile: (210) 250-6100

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Telephone: (214) 651-4300
Facsimile: (214) 651-4330

* * *

EXHIBIT 1

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

AFFIDAVIT OF TRANSLATION

Before me, the undersigned Notary appears RAMON M. DEL VILLAR who, after being first duly sworn, deposes and says that the facts contained herein are true and correct and based upon his personal knowledge:

1. "My name is Ramón Miguel del Villar. I am over the age of twenty-one years and competent to make this affidavit. I have personal knowledge of all the facts stated in this affidavit and they are true and correct.

2. I am a court interpreter certified for Spanish/English proceedings by the Administrative Office of the United States Courts.

3. I am an attorney licensed in the State of Texas with Texas State Bar Number 00785814.

4. I am the Chief Interpreter for the United States District Court, Southern District of Texas.

5. I am the holder of license number 292 as a State of Texas court interpreter.

6. I hereby certify that the document attached hereto is an English translation of two Spanish documents, one undated with the heading: "Safety," the other a letter signed by Rossana Roys in her capacity as Vice President, Stanford Financial Group, dated June 12, 1996.

7. I further certify that said translation is a fair and accurate translation of the poorly drafted and punctuated Spanish language document provided to me for translation of which a copy is kept in my records."

FURTHER AFFIANT SAYETH NOT.

/s/ Ramon M. Del Villar
RAMON M. DEL VILLAR

BEFORE ME, the undersigned Notary Public, appeared today RAMON M. DEL VILLAR who, having first been placed under oath, under his oath stated that he is the person whose signature appears affixed to the foregoing statement and further stated under his oath that what said statement contains is of his personal knowledge and true and correct.

SUBSCRIBED before me on this 25th day of June of 2009.

/s/ Karen D. Harpold
Notary Public in and for the
State of Texas

My commission expires:

Karen D. Harpold
My Commission Expires
May 25, 2013

STANFORD FINANCIAL GROUP

Rossana Roys
Vice President

Houston, June 12, 1996

Monterrey, Nuevo Leon C.P.
MEXICO

Dear :

I was very pleased to have a conversation with you yesterday afternoon and thank you for your interest and the time you gave me to briefly detail for you the services of Stanford International Bank Ltd., our affiliate bank. Further, I take this opportunity to formally introduce myself and make myself available for any assistance you may need!

As I mentioned over the phone, Stanford International Bank Ltd., based on Antigua, West Indies, belongs to our Group, Stanford Financial Group, which is a totally American company based in Houston, Texas. Stanford Financial Group provides promotion and information services for Stanford International Bank Ltd. and other companies of the Group to investors that are neither citizens nor residents of the United States, providing personalized attention to the clients of the Bank, jointly with strict confidentiality, safety and efficiency.

The Fixed-Term Certificate of Deposit "Flex CD", is the account that is promoted the most and that I would suggest you should consider among your investment plans to diversify funds. The Flex CD may be opened with a minimum of $10,000.00 U.S., with the flexibility of being able to increase the

account at any time with deposits of a minimum of $5,000.00 or more, benefiting from the same rate and without it changing the date it becomes due.

For withdrawals there is the flexibility of being able to withdraw up to 25% of the capital, before the due date and without penalty, providing you availability of funds in 5 working days. Interests accrue in a compound manner daily, based on a calendar year of 365 days and by instructions of the client, interests may be issued monthly, tri-monthly, or be automatically reinvested into the principal, which provides a greater compound interest "yield".

In the Flex CD of $100,000.00 U.S. or more, interest becomes automatically adjustable without your having to be concerned with the fluctuation of interest. This means that if the rates go up during the term, your interest would automatically go up to what the term elected is earning at that time, but if the rates were to go down, the Bank guarantees you to respect the initial rate with which you opened the account.

If you are considering investing $100,000.00 U.S. or more and it is money you are not thinking of touching but you want to capitalize with a good yield, I do suggest you to invest at a term of longer than 12 months to earn a better rate in that you would not have to worry in case interest rates go down during the term, and have the peace of mind of having 25% of your principal available to withdraw without any penalty and with a 5-day notice.

I invite you to go over the information carefully and get in touch with me for any question you may have or for me to indicate the procedures to be followed. To open the account it is not necessary for you to

travel to Houston. The account may be opened through a Wire Transfer of Funds or with a personal check.

From Mexico you can call me toll-free at 35-800-345-2486. If I am not in the office please ask for Miss Claudia Martinez, who will help you gladly during my absence. I will have a work-related trip to Lima, Peru, the week of June 17, maintaining daily contact with the office, where I will be back on Monday June 24.

I hope to have the pleasure of being helpful to you and be able to count you as one of my distinguished clients. Wishing to meet you personally in a near future and wishing you a nice week, I remain.

Sincerely,

/s/ Rossana Roys
Rossana Roys

P.S. You mentioned that you had been in a fishing trip. If you may be interested in fishing in Venezuela at some point in time, let me know because I have some Venezuelan friends who love fishing / they have a camper for this kind of activity and the catch is fabulous! Rossana

* * *

EXHIBIT 2

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

AFFIDAVIT OF TRANSLATION

Before me, the undersigned Notary appears RAMON M. DEL VILLAR who, after being first duly sworn, deposes and says that the facts contained herein are true and correct and based upon his personal knowledge:

1. "My name is Ramón Miguel del Villar. I am over the age of twenty-one years and competent to make this affidavit. I have personal knowledge of all the facts stated in this affidavit and they are true and correct.

2. I am a court interpreter certified for Spanish/English proceedings by the Administrative Office of the United States Courts.

3. I am an attorney licensed in the State of Texas with Texas State Bar Number 00785814.

4. I am the Chief Interpreter for the United States District Court, Southern District of Texas.

5. I am the holder of license number 292 as a State of Texas court interpreter.

6. I hereby certify that the document attached hereto is an English translation of a Spanish document with the heading: "Stanford. What protection does Stanford International Bank offer its depositors?"

7. I further certify that said translation is a fair and accurate translation of the poorly drafted and punctuated Spanish language document provided to me for translation of which a copy is kept in my records."

FURTHER AFFIANT SAYETH NOT.

/s/ Ramon M. Del Villar

RAMON M. DEL VILLAR

BEFORE ME, the undersigned Notary Public, appeared today RAMON M. DEL VILLAR who, having first been placed under oath, under his oath stated that he is the person whose signature appears affixed to the foregoing statement and further stated under his oath that what said statement contains is of his personal knowledge and true and correct.

SUBSCRIBED before me on this 18th day of June of 2009.

/s/ Cynthia Jantowski

Notary Public in and for the
State of Texas

My commission expires: 5/6/2011

Stanford

What protection offers Stanford International Bank to its depositors?

The funds of Stanford International Bank and its clients are protected by one of the insurance programs, **unique in its class**, that provide the following coverage:

Insolvency policy that insures the funds that **SIB** maintains in deposit with correspondent institutions, including a coverage of the excess over the FDIC in case of United States banks. This policy is issued by **Brit Insurance Ltd. and scored by AM. Best "*A+*" (Excellent) and by Fitch *A+*.**

General bond for bankers wit'. **Lloyds of London,** one of the insurance companies with great reputation and more important of London and the score granted by AM. BEST is "*AA-*" (Excellent).

Policy of liability of directors and executives with **Lloyds of London** scored by AM. BEST "*AA+*" (Excellent).

All the correspondent banks utilized by **Stanford International Bank** have great reputation **(TORONTO DOMINION BANK, UBS and HSBC)** have already been pre-approved by the insurance companies that issued the policies for the coverage that these institutions require to guarantee our operations in their banks and thus guarantee the funds that SIB maintains in these institutions for any insolvency of some of these banks.

To be able to qualify **Stanford International Bank**, and to have the following coverage the Bank is audited annually by the insurance companies. Another external company also makes a risk

analysis to determine if the Bank is doing everything necessary to protect its assets. This provides another safety element for the clients. These policies have been kept in **SIB** for **over 20 years** granting firmness and seriousness, to over 75,000 clients in the world, and to the almost **$6 billion dollars in** direct **deposits** in instruments that belong to **SIB**.

In general, financial institutions that do not make commercial loans are safer than those who do, investment banks and those who do not make commercial loans are not exposed to this type of risk. One of the main causes for which a bank goes bankrupt is due to its portfolio of uncollectible loans. Throughout the years, banks around the world have experienced problems with loans that it has not been possible to collect. This is our greater virtue, why Stanford being ***Private Investment Banking*** only engaged in seeking safe products with stable earnings and with the minimum investment exposure risk, this offers a without par advantage the funds of its clients are in investments in which there are always positive results and in favor of the interests and assets of the institution.

Stanford International Bank in its investment funds same as the banks with the better reputation makes its investments of the greater part of its assets in titles such as **first grade investment bonds (AAA, AA+, AA)** and shares of stock (of great reputation, liquidity and credibility) and in negotiable instruments in the financial markets and easily made liquid should it be necessary. In contrast, commercial banks or savings banks normally place a big part of their funds in loans which are not easily made liquid upon requirements of the bank to be able to have cash liquidity and also

possess other long term assets given as guarantee which are not easily made liquid in a fast market, which is why these commercial banks only maintain a minimum part of their available funds which makes them by very susceptible to any instability of liquidity and availability for their clients should it be needed.

Debtors of **Stanford International Bank** are the issuers of the titles that the Bank maintains in its portfolio (renowned companies, multinationals and prestigious international banks) whose risk of insolvency is minimum.

The Bank has resources available for productive investments greater than the total of deposits in that the Bank also has available for this purpose most of its capital (The long term assets of the Bank are minimal).

The Clients of Stanford International Bank come from 102 countries. This great diversification minimizes the exposure of a regional market.

Because **Stanford International Bank** is not a United States bank, it is not covered by the FDIC insurance (Federal Deposit Insurance Company). Nevertheless nowadays FDIC provides only a relatively poor protection, that has not been changed since 1929: where FDIC, First, only covers up to $100,000 per account/client. Second, currently the reserve funds of FDIC only cover a minimum part of the deposits of all the banks that are insured in a proportion of 1 to 1000 and in the third place, FDIC does not make any bank safer, nor prevents a bank from becoming bankrupt, the banks that go bankrupt do so because of bad practices in the use of their resources and investments, where FDIC is very

clear and states that there is no coverage whatsoever of Federal insurance for this type of bankruptcies.

American banks in case of a need to cover the funds by the FDIC, the client must directly address in a personal manner the governmental agency that would be in charge of programming the payments to its depositors in case an institution has to be covered for being insolvent, but there is no FDIC coverage should the bank go bankrupt because of conversion of the deposits and funds of its clients.

NASD and **SIPC**, , are two safety entities that are utilized by the New York stock exchange, where **Stanford Group** is a member, which insure that the financial companies that invest the funds of their clients in financial instruments of any kind that are traded in the stock exchange, be invested in companies that represent for the stock exchange of high security and trust for these two supervision and guarantee entities in the stock exchange markets, measuring firmness and safety so that the funds utilized be well invested.

Stanford International Bank is probably the only International Bank that offers this type of security to its clients.

Thank you for considering us for your next investment.

* * *

EXHIBIT 3

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

AFFIDAVIT OF TRANSLATION

Before me, the undersigned Notary appears RAMON M. DEL VILLAR who, after being first duly sworn, deposes and says that the facts contained herein are true and correct and based upon his personal knowledge:

1. "My name is Ramón Miguel del Villar. I am over the age of twenty-one years and competent to make this affidavit. I have personal knowledge of all the facts stated in this affidavit and they are true and correct.

2. I am a court interpreter certified for Spanish/English proceedings by the Administrative Office of the United States Courts.

3. I am an attorney licensed in the State of Texas with Texas State Bar Number 00785814.

4. I am the Chief Interpreter for the United States District Court, Southern District of Texas.

5. I am the holder of license number 292 as a State of Texas court interpreter.

6. I hereby certify that the document attached hereto is an English translation of two Spanish documents, one undated with the heading: "Safety," the other a letter signed by Rossana Roys in her capacity as Vice President, Stanford Financial Group, dated June 12, 1996.

7. I further certify that said translation is a fair and accurate translation of the poorly drafted and punctuated Spanish language document provided to me for translation of which a copy is kept in my records."

FURTHER AFFIANT SAYETH NOT.

/s/ Ramon M. Del Villar

RAMON M. DEL VILLAR

BEFORE ME, the undersigned Notary Public, appeared today RAMON M. DEL VILLAR who, having first been placed under oath, under his oath stated that he is the person whose signature appears affixed to the foregoing statement and further stated under his oath that what said statement contains is of his personal knowledge and true and correct.

SUBSCRIBED before me on this 25th day of June of 2009.

/s/ Karen D. Harpold
Notary Public in and for the
State of Texas

My commission expires:

Karen D. Harpold
My Commission Expires
May 25, 2013

SAFETY

Stanford International Bank Ltd. as an investment bank, does not make loans (unless they are guaranteed by fixed-term deposits) nor issues credit instruments of any kind. Commercial banks invest their funds in loans and credit operations that entail risk and that sometimes they do not recover, incurring big losses. Consequently, **Stanford International Bank Ltd.** does not have those kinds of risks and avoids that which is today the main cause of insolvency of commercial banking.

Stanford International Bank Ltd. invests its funds in a portfolio of securities that because it is highly diversified and managed under a criterion of maximum stability and cautiousness, has a minimal risk of loss, in that most of the portfolio is made up of bonds issued by the government of the United States or by multinational companies and banks with international prestige.

Further, to guarantee and give greater safety to its clients, **Stanford International Bank Ltd.** is the beneficiary of an insurance policy that guarantees the funds and investments in any amount and currency that the Bank maintains in its correspondent banks. Each one of these banks is previously approved by the insurance company. This means that in case of insolvency of these banks, that are the depositaries of the funds and investments, **Stanford International Bank Ltd.**, receives from the insurance company a full reimbursement of its deposits, which at the same time protects the clients of **Stanford International Bank Ltd.**

Besides, **Stanford International Bank Ltd.** has a fidelity policy (Banker's Blanket Bond) that covers all financial transactions of the Bank in case of loss, swindle or theft. This policy is extraordinarily difficult to acquire and few banks are able to satisfy the requirements to obtain it.

The two insolvency guarantee policies (Depository Insolvency Policy and Excess FDIC Deposit Policy) are underwritten by Great American Insurance Co. and General Star Indemnity Co. respectively. Also, the fidelity policy (Bankers Blanket Bond) is underwritten by Great American Insurance Co. These two insurance companies (Great American Insurance Co. and General Star Indemnity Co.) are rated A and A++ respectively (Best's Key Rating Guide).

The insurance policies of Stanford International Bank Ltd. are managed by Bowen, Miclette, Descant & Britt, a subsidiary company of SEDGWICK JAMES OF HOUSTON, who is one of the main insurance brokers in the world. If you wish to confirm this information, please contact:

Mr. Robert Winter – Financial Specialist
Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. Box 922022
Houston, Texas 77292,2022
Tel: (713) 880-7100
Fax: (713) 880-7166

* * *

EXHIBIT 4

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

January 16, 1996

COPY

Mr. Oreste Tonarelli
Director
Stanford Financial Group
201 South Biscayne Blvd.
Suite 1200
Miami, Florida 33131

RE: STANFORD INTERNATIONAL BANK

Dear Mr. Tonarelli:

I have been doing business with Stanford International Bank for over eight years and find them to be first class business people. Through Crump Financial Services, a Sedgwick subsidiary, we have placed the following coverages that are currently in effect:

1) The Bankers Blanket Bond Policy with Lloyds of London protects the bank from embezzlement by their own employees, burglary and robbery by others and from wire transfer fraud.

2) The Directors and Officer's Liability Policy with Lloyd's of London indemnifies the bank and its Directors and Officers against lawsuits.

3) The Depository Insolvency Policy underwritten by Great American Insurance protects the bank against the failure of their overseas depositories.

4) The Excess FDIC Deposit Policy underwritten by General Star Indemnity Company protects the bank against failure of their U.S. depositories.

In order to qualify for the above coverage, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We feel that you will be pleased with any dealings you have with Stanford International Bank. Please feel free to contact me if you have any further questions.

Sincerely,

/s/ Robert S. Winter

Robert S. Winter
Financial Specialist

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

February 10, 1998

C/O Stanford Group Company
201 S. Biscayne Blvd. Ste. 1200
Miami, FL 33131

RE: Stanford International Bank

Dear:

I have been doing business with Stanford International Bank for over ten years and find them to be first class business people. We have placed the following coverages that are currently in effect.

1) Directors and Officers Insurance with Lloyds of London (Expiration 1/1/99)

2) Bankers Blanket Bond with Lloyds of London (Expiration 1/1199)

3) Excess FDIC Insurance with General Star Indemnity (Expiration 7/1/98)

4) Depository Insolvency with Great American Insurance Co. (Expiration 1/1/99)

All of these coverages have been in effect for various terms for the past five to ten years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverages, the Bank underwent a Risk Management review conducted by an outside audit form.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Robert S. Winter

Robert S. Winter
Financial Specialist

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

February 8, 1999

Mexico, D.F.
Mexico

RE: **STANFORD INTERNATIONAL BANK LIMITED**

Dear:

I have been doing business with Stanford International Bank for over eleven years and find them to be first class business people. We have placed the following coverages that are currently in effect:

1) Directors and Officers Insurance with Lloyds of London - Best Rating A (Expiration 9/1/00);

2) Bankers Blanket Bond with Lloyds of London - Best Rating A (Expiration 9/1/00);

3) Excess FDIC Insurance with General Star Indemnity - Best Rating A++ IX (Expiration 7/1/99); and

4) Depository Insolvency with Great American Insurance Co. - Best Rating A XI (Expiration 9/1/00).

All of these coverages have been in effect for various terms for the past six to eleven years, however, no representations can be made that such coverages will remain in effect. Attached is a schedule of what the Best Ratings mean.

In order to qualify for the above coverages, the Bank underwent a Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Robert S. Winter

Robert S. Winter
Financial Specialist

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

June 26, 2001

RE: **STANFORD INTERNATIONAL BANK LIMITED**

Dear:

I have been doing business with Stanford International Bank for over eleven years and find them to be first class business people. We have placed the following coverages that are currently in effect:

1) Directors and Officers Insurance with Lloyds of London (Expiration 9/1/02);

2) Bankers Blanket Bond with Lloyds of London (Expiration 9/1/02);

3) Excess FDIC Insurance with St. Paul Medical Liability Ins. (Expiration 9/1/01); and

4) Depository Insolvency with Great American Insurance Co. (Expiration 9/1/01)

All of these coverages have been in effect for various terms for the past six to eleven years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverage, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Robert S. Winter

Robert S. Winter
Financial Specialist

September 23, 2002

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

Mexico, D.F.
C.P.

RE: STANFORD INTERNATIONAL BANK LIMITED

Dear Mr.

I have been doing business with Stanford International Bank for over fourteen years and find them to be first class business people. We have placed the following coverages that are currently in effect:

1) Directors and Officers Insurance with Lloyds of London (Expiration 8/15/03);

2) Bankers Blanket Bond with Lloyds of London (Expiration8/15/03);

and

3) Depository Insolvency with Great American Insurance Co. (Expiration 8/15/03)

All of these coverages have been in effect for various terms for the past six to eleven years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverage, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Robert S. Winter

Robert S. Winter
Financial Specialist

April 6, 2004

Bowen, Miclette, Descant & Britt
1111 North Loop West, Suite 400
P.O. BOX 922022
Houston, Texas77292-2022
(713) 880-7100
Fax: (713) 880-7166

C/O David Nanes

RE: STANFORD INTERNATIONAL BANK LIMITED

Dear:

I have been doing business with Stanford International Bank for over fifteen years and find them to be first class business people. We have placed the following coverages that are currently in effect:

1) Directors and Officers Insurance with Lloyds of London (Expiration 8/15/04);

2) Bankers Blanket Bond with Lloyds of London (Expiration 8/15/04);

3) Depository Insolvency with Great American Insurance Co. (Expiration 8/15/04)

All of these coverages have been in effect for various terms for the past six to twelve years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverage, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Robert S. Winter
Robert S. Winter
Financial Specialist

August 25, 2005 **WILLIS**

México, D.F.
Mexico

RE: STANFORD INTERNATIONAL BANK LIMITED

We are the insurance broker for Stanford International Bank and find them to be first class business people. We have placed the following coverages that are currently in effect:

1. Directors and Officers Liability Insurance with Lloyds of London (Expiration 8/15/06);
2. Bankers Blanket Bond with Lloyds of London (Expiration 8/15/06);

All of these coverages have been in effect for various terms for the past six to twelve years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverages, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Amy S. Baranoucky
Amy S. Baranoucky
Vice President
Executive Risks

August 25, 2005 **WILLIS**

Victor Hugo #59 esq. Leibnitz
Col. Anzures 11590
México, D.F.
Mexico

RE: **STANFORD INTERNATIONAL BANK LIMITED**

We are the insurance broker for Stanford International Bank and find them to be first class business people. We have placed the following coverages that are currently in effect:

1. Directors and Officers Liability Insurance with Lloyds of London (Expiration 8/15/06);
2. Bankers Blanket Band with Lloyds of London (Expiration 8/15/06);

All of these coverages have been in effect for various terms for the past six to twelve years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverages, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Amy S. Baranoucky
Amy S. Baranoucky
Vice President
Executive Risks

October 18, 2006 **WILLIS**

RE: **STANFORD INTERNATIONAL BANK LIMITED**

Gentlemen:

We are the insurance broker for Stanford International Bank and find them to be first class business people. We have placed the following coverages that are currently in effect:

1. Directors and Officers Liability Insurance with Lloyds of London (Expiration 8/15/07);
2. Bankers Blanket Bond with Lloyds of London (Expiration 8/15/07);

All of these coverages have been in effect for various terms for the past six to twelve years, however, no representations can be made that such coverages will remain in effect.

In order to qualify for the above coverages, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We have found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Amy S. Baranoucky
Amy S. Baranoucky
Vice President
Executive Risks

October 10th, 2008 **WILLIS**

Attn:

RE: STANFORD INTERNATIONAL BANK LIMITED

We are the Instance broker for **Stanford International Bank** and find them to be first class business people. We have placed the following coverages that are currently in effect:

1. Directors and Officers Liability Insurance with Lloyds of London (Expiration 8/15/09);
2. Bankers Blanket Bond with Lloyds of London (Expiration 8/15/09);

All of these coverages have been in effect for various terms for the past six to fifteen years; however no representation can be made that such coverages will remain in effect.

In order to qualify for the above coverages, the Bank underwent a stringent Risk Management Review conducted by an outside audit firm.

We found that all our dealings with the Bank have been conducted in a professional and satisfactory manner.

Sincerely,

/s/ Amy S. Baranoucky
Amy S. Baranoucky
Vice President
Executive Risks

EXHIBIT 5

We need to talk!! Page 1 of 1

From: Frans Vingerhoedt [fvingerhoedt@msn.com]
Sent: Friday, February 06, 2009 11:27 PM
To: Stanford, Allen
Cc: Nanes, David
Subject: We need to talk!!

Allen we need to talk soonest! I have no doubt you are going crazy and are doing whatever is humanly possible to remedy the situation, but things are starting the unravel quickly on our side in the Caribbean and Latin America. We need to get a strategy together before the floodgates of withdrawals starts from our side (on top of the US).

We have obvious cash flow problems and have increasingly more difficulties in explaining clients why WT are delayed for more and more time. We have no answers. Clients are completely restless and their only comfort is our word.

The BS answers we get from JRT and SIB only add to the anxiety.

We need to come up with a strategy to give preference to certain wires to people of influence in certain countries, if not we will see a run on the bank starting next week.

We all know what that means. There are real bullets out there with my name on, David's name and many others and they are very real.

Please give David and me a call or let's get together in Miami over the weekend. We are all in this together. We cannot hold the fort and certainly not jump start production if we are completely in the dark. Strain is building quickly amongst FCs.

EXHIBIT 6

NEWS RELEASE

Contact:
Investors: **Kerry K. Calairo**
+1 212 837-0880
Email: calaiaro_ke@willis.com

Media: **Dan Prince**
+1 212 837-0806
Email: prince_da@willis.com

Willis Continues to Build Employee Benefits Practice

Austin, TX Office Adds Five Professionals

New York, NY, February 14, 2005 — Willis Group Holdings (NYSE: WSH), the global insurance broker, continues to strengthen its Employee Benefits Practice this time adding five professionals in its Austin, TX office.

Today, the company announces that **Julie Kirk, Brandy Norton, Sue Boatman, Melissa Zimmerman** and **Mark Jamieson** have all joined Willis in Austin and will focus their efforts on growing Willis' benefits business across central Texas.

Kirk joins Willis as a Senior Vice President having served at Marsh most recently as a Vice President, Central Texas Practice Leader, and managed both the Austin and San Antonio employee benefits departments. Prior to joining Marsh, Kirk was the Vice President of Human Resources at two software companies in Austin and has 25 years of management experience.

Norton, an Account Executive at Willis, served four years at Marsh most recently as Assistant Vice President, Benefits Consultant, and was primarily responsible for the large self-funded accounts. She spent four years at a local TPA as an Account Executive prior to joining Marsh and has extensive experience in the self-funded arena.

Boatman, a Senior Client Manager at Willis, brings 17 years experience as Account Manager for TPA's, specializing in self-funded account management and served one year at Marsh as Employee Benefits Analyst. Boatman has a BS degree in education.

Zimmerman, a Client Manager with Willis, brings three years of carrier experience to Willis and was most recently an Assistant Vice President, Benefits Consultant, at Marsh. Zimmerman graduated from the University of Texas, Austin, with a BS in Corporate Communications.

Jamieson, a Senior Financial Analyst with Willis, brings 15 years of analytical experience to Willis' Central Texas team and assists Willis clients in reviewing, analyzing and evaluating their employee benefits offerings. Prior to joining Willis, Jamieson served as a Senior Financial Analyst at Marsh. Jamieson has a BS in Accounting from Brigham Young University and an MBA from Arizona State University.

"As a former Vice President of Human Resources, I relate to such professionals because I know what they are looking for when they purchase employee benefits plans," said Ms. Kirk. "Our Austin team possesses an in-depth knowledge of the local health markets and managed care providers and understands their products, capabilities, networks

and pricing. Such experience and creativity is critical when dealing with our clients and prospects in a time when healthcare costs are at the top of companies' priority lists."

"Central Texas is an important market to Willis because we believe our business model, emphasizing client advocacy, combined with the creative solutions and resources, will make a major impact for the clients we serve," said Tom Patrick, CEO of the Houston and Austin offices. "The hiring of this outstanding group of Employee Benefits professionals further demonstrates our commitment to the robust Central Texas market."

Willis Group Holdings Limited is a leading global insurance broker, developing and delivering professional insurance, reinsurance, risk management, financial and human resource consulting and actuarial services to corporations, public entities and institutions around the world. With over 300 offices in more than 100 countries, its global team of 13,000 associates serves clients in some 180 countries. Additional information on Willis may be found on its web site www.willis.com.

* * *

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES ROLAND, *et al.*,	§	
	§	**Civil Action No.:**
Plaintiffs,	§	**3:10-CV-0224-N**
	§	
v.	§	
	§	
JASON GREEN, *et al.*,	§	
	§	
Defendants.	§	

NOTICE

The Court takes judicial notice of the Declaration of Linda M. Yoder filed in *SEC v. Stanford Int'l Bank, Ltd.*, Civil Action No. 3:09-CV-298-N (N.D. Tex. filed Feb. 17, 2009). *See* App. to SEC's Application for Issuance of a Temporary Restraining Order, Preliminary Injunction, and Orders Freezing Assets, Requiring Accounting, Requiring Preservation of Documents, and Authorizing Expedited Discovery at 585 [13].

Signed July 22, 2011

/s/ David C. Godbey
David C. Godbey
United States District Judge

APPENDIX N

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SAMUEL TROICE, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No.
	§	3:09-CV-1274-N
WILLIS OF	§	
COLORADO, INC. *et al.*,	§	
	§	
Defendants.	§	

FINAL JUDGMENT

By separate Order of this same date, the Court has granted Defendants' motions to dismiss and Plaintiffs' notice of voluntary dismissal of individual claims. Accordingly, it is ordered that Plaintiffs take nothing by their claims against Defendants, that those class claims are dismissed with prejudice, and that those individual claims are dismissed without prejudice. Court costs are taxed against Plaintiffs. All relief not expressly granted is denied.

This is a final judgment.

Signed October 27, 2011.

/s/ David C. Godbey
David C. Godbey
United States District Judge

APPENDIX O

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 11-10932

FILED
March 19, 2012
Lyle W. Cayce
Clerk

D.C. Docket No. 3:10-CV-224
D.C. Docket No. 3:10-CV-225

JAMES ROLAND; MICHAEL J. GIAMBRONE; THOMAS E. BOWDEN, Individually and On Behalf Of Thomas E. Bowden S.E.P. I.R.A.; T. E. BOWDEN, SR., Ret. Trust; G. KENDALL FORBES, Individually and on Behalf of G. Kendall Forbes I.R.A.; ET AL,

Plaintiffs–Appellants

v.

JASON GREEN; CHARLES JANTZI; TIFFANY ANGELLE; JAMES FONTENOT; THOMAS NEWLAND; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,

Defendants–Appellees

LEAH FARR; ET AL,
Plaintiffs–Appellants

v.

JASON GREEN; DIRK HARRIS; TIMOTHY E. PARSONS; CHARLES JANTZI; TIFFANY ANGELLE; GRADY LAYFIELD; HANK MILLS; JOHN SCHWAB; RUSS NEWTON; JIM WELLER; SEI INVESTMENTS COMPANY; CERTAIN UNDERWRITERS AT LLOYDS LONDON, in Syndicates 2987, 1866, 1084, 1274, 4000 & 1183; ET AL,
Defendants–Appellees

Appeal from the United States District Court for the Northern District of Texas, Dallas

Before REAVLEY, DAVIS, and PRADO, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and was argued by counsel.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that defendants-appellees pay to plaintiff-appellants the cost on appeal to be taxed by the Clerk of this Court.

ISSUED AS MANDATE: April 27, 2012

APPENDIX P

POSTED
MAY 15, 2012

Clerk of Court

East Baton Rouge

Re: #581479 19th District Court, Parish of East Baton Rouge

Per judgment and opinion from the 5th Circuit United States Court of Appeals, this case is being remanded back to your court. Please contact our Court if you need additional information.

Best Regards,
Sonia VanCamp
CV/CR Appeals Clerk
U.S. District Court
Northern District of Texas
Sonia_vancamp@txnd.uscourts.gov
(214) 753-2174

RECEIVED
MAY 15, 2012
Deputy Clerk of Court

APPENDIX Q

POSTED
MAY 29, 2012

United States District Court
Northern District of Texas

Karen Mitchell
Clerk of the Court

Dallas Division

RECEIVED
MAY 25, 2012
Deputy Clerk of Court

East Baton Rouge Parish Clerk of Court
P.O. Box 1991
Baton Rouge, LA 70821-1991

RE: 581,480

Style: Leah Farr, et al. v. Jason Green, et al.

Dear Clerk:

Enclosed is a certified copy of an Order and/or Judgment remanding the above captioned case back to the 19th DC, Parish of East Baton Rouge, 581,480 "26", along with a copy of the docket sheet.

If you have any questions regarding this matter, I may be reached at 214-753-2174.

Sincerely,
Karen Mitchell, Clerk

By: s/ Sonia VanCamp
Deputy Clerk

APPENDIX R

* * *

FRIDAY, JANUARY 18, 2013

CERTIORARI GRANTED

12-79	CHADBOURNE & PARK LLP V. TROICE, SAMUEL, ET AL.
12-86	WILLIS OF COLORADO INC., ET AL. V. TROICE, SAMUEL, ET AL.
12-88	PROSKAUER ROSE LLP V. TROICE, SAMUEL, ET AL.

The motion of Breazeale, Sachse & Wilson, LLP for leave to file a brief as *amicus curiae* is granted. The motion of DRI-The Voice of the Defense Bar for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari in No. 12-79 is granted limited to Question 1 presented by the petition. The petition for a writ of certiorari in No. 12-86 is granted. The petition for a writ of certiorari in No. 12-88 is granted limited to Question 1 presented by the petition. The cases are consolidated and a total of one hour is allotted for oral argument.

* * *

PETITIONER'S BRIEF

MAY 3 - 2013

No. 12-86

In the
Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; AND SEI INVESTMENTS COMPANY,
Petitioners,

v.

SAMUEL TROICE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR PETITIONERS

PAUL D. CLEMENT
Counsel of Record
JEFFREY M. HARRIS
BANCROFT PLLC
1919 M Street NW, Suite 470
Washington, DC 20036
(202) 234-0090
pclement@bancroftpllc.com

ADAM L. ROSMAN
WILLIS GROUP
200 Liberty Street
New York, NY 10281
(212) 915-8249

ROBERT M. LAPINSKY
WILLIS NORTH AMERICA INC.
26 Century Boulevard
Nashville, TN 37214
(615) 872-3007

JONATHAN D. POLKES
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8000

Counsel for Petitioners Willis Limited and Willis of Colorado

May 3, 2013 *(Additional Counsel Listed on Inside Cover)*

J. GORDON COONEY, JR.
MORGAN, LEWIS &
BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
(212) 963-5000

ALLYSON N. HO
MORGAN, LEWIS &
BOCKIUS LLP
1000 Louisiana Street
Suite 4000
Houston, TX 77002
(713) 890-5000

Counsel for Petitioner SEI Investments Company

BRADLEY W. FOSTER
ANDREWS KURTH LLP
1717 Main Street
Suite 3700
Dallas, TX 75201
(214) 659-4646

Counsel for Petitioner Bowen, Miclette & Britt, Inc.

QUESTION PRESENTED

The Securities Litigation Uniform Standards Act of 1998 ("SLUSA") precludes state law class actions that allege a misrepresentation or omission "in connection with" the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1). The complaints at issue in this case plainly include such alleged misrepresentations. The district court, applying Eleventh Circuit precedent, recognized as much and dismissed the complaints. However, the Fifth Circuit disagreed and, purporting to apply the Ninth Circuit's test, found the fact that the complaints included alleged misrepresentations in connection with a covered security insufficient to invoke SLUSA because the complaints also included *other* misrepresentations that were not made "in connection with" a covered securities transaction. In doing so, the Fifth Circuit acknowledged that it was departing from the holding of the Eleventh Circuit and several other circuits.

The question presented is whether a covered state law class action complaint that unquestionably alleges "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security nonetheless can escape the application of SLUSA by including other allegations that are farther removed from a covered securities transaction.

PARTIES TO THE PROCEEDINGS

Petitioners Willis Limited, Willis of Colorado, Bowen, Miclette & Britt, Inc., and SEI Investments Company are defendants in two separate actions in the district court and appellees in a consolidated action in the court of appeals.

The Willis Respondents are the following individuals who are plaintiffs in the district court action in which Willis Limited, Willis of Colorado, and Bowen, Miclette & Britt, Inc. are defendants and appellants in the consolidated action in the court of appeals: Samuel Troice; Martha Diaz; Paula Gilly-Flores; Punga Punga Financial, Ltd., individually and on behalf of a class of all others similarly situated; Promotora Villa Marino, CA; Daniel Gomez Ferreiro; and Manuel Canabal.

The SEI Respondents are the following individuals who are plaintiffs in the district court action in which SEI Investments Company is a defendant and appellants in the consolidated action in the court of appeals: James Roland; Susan Roland; Michael J. Giambrone; Thomas E. Bowden, individually and on behalf of the Thomas E. Bowden SEP IRA; T.E. Bowden Sr. Ret. Trust; G. Kendall Forbes, individually and on behalf of G. Kendall Forbes IRA; Deborah S. Forbes, individually and on behalf of the Deborah S. Forbes IRA; William Bruce Johnson on behalf of the Benton Bruce Johnson Trust #1; William Bruce Johnson on behalf of the Mark Calvin Johnson Trust #1; William Bruce Johnson on behalf of the Martha J.C. Johnson GEN SKPG TR-SAS; William Bruce Johnson on behalf of the Aimee Lynn Johnson Trust #1-SAS; William

Bruce Johnson on behalf of the Benton B. Johnson TEST TR II-SAS; Terence Beven, individually and on behalf of Terrence Beven IRA; Thomas J. Moran; Ralph D. D'Amore, individually and on behalf of FBO Ralph Daniel D'Amore MD, A Professional Corporation; Ralph D. D'Amore IRA; Daniel P. Landry, individually and on behalf of Daniel P. Landry IRA; Ronald R. Marston, individually and on behalf of Ronald R. Marston IRA; Rodney P. Starkey, individually and on behalf of Rodney P. Starkey IRA; Stephen Wilson, individually and on behalf of Bone and Joint Clinic FBO Stephen Wilson; Jeanne Anne Mayhall, individually and on behalf of Microchip ID Services Inc. Retirement Plan; John Wade, individually and on behalf of Microchip ID Services Inc. Retirement Plan; Lynn J. Philippe, individually and on behalf of Lynn J. Philippe IRA; Leah Farr; Troy Lillie; Kenneth Dougherty; Charles White; Martha Jean Witmer; Sharon Witmer; Olivia Sue Warnock; Clyde J. Chisholm; Ronald McMorris; Arthur Ordoyne; William Dawson; Terry Tullis; James Stegall; Anthony Ventrella; Robert Smith; Thomas Slaughter; Larry Perkins; William Phillips; Charles Hart; Richard Feucht; Lonnie Ordoyne; Arthur Waxley; Darrell Courville; Merrill Laplante; James Brown; Ira Causey; Jerry Burris; Jacqueline Millet; Louis Mier; Mamie Baumann; Charles Sanchez; Joseph Chustz; Robert Bush; Bobby Nix; Claude Marquette; Gwen Fabre; Robert Schwendimann; Wanda Bevis; Terry Tarver; Marcel Dumestre; Ronald Valentine; Bennie O'Rear; Julie Savoy; Laura Lee; Dennis Kirby; Billie Ruth McMorris; Larry Smith; Kenneth Wilkewitz; Murphy Buell; Kerry Kling; Lynn Gildersleeve Michelli; Willa

Mae Gildersleeve; Anita Ellen Carter; Fred Demarest; Nancy Gill; Linda Boyd; Virginia Buscheme; Robert Gildersleeve; Walter Stone; Virginia McMorris; Carol Stegall; Monty Perkins; Joan Feucht; Kathleen Mier; Mamie Sanchez; Margaret S. Nix; Margaret Dumestre; Claudia O'Rear; Gordon C. Gill; John Buscheme; Charles Massey; and Gary Magee.

CORPORATE DISCLOSURE STATEMENT

Petitioners Willis Limited and Willis of Colorado, Inc., are indirect, wholly owned subsidiaries of Willis Group Holdings Public Limited Company, a publicly held corporation listed on the New York Stock Exchange. No other publicly held corporation owns 10% or more of Willis Group Holdings' stock.

Petitioner Bowen, Miclette & Britt does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner SEI Investments Company does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

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Other Authorities

Cornerstone Research, *Accounting Class Action Filings and Settlements* (2012) 44

H.R. Rep. No. 104-369 (1995) (Conf. Rep.) 5

H.R. Rep. No. 105-803 (1998) (Conf. Rep.) 6

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S. Rep. No. 105-182 (1998) 48

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BRIEF FOR PETITIONERS

OPINIONS BELOW

The Fifth Circuit's opinion is reported at 675 F.3d 503 and reproduced at Pet.App.1-43. The district court's opinion and order dismissing the action against Petitioner SEI is reproduced at Pet.App.48-75. The district court's order dismissing the action against Petitioners Willis and BMB is reproduced at Pet.App.76-77.

JURISDICTION

The Fifth Circuit issued its decision on March 19, 2012, Pet.App.3, and denied rehearing en banc on April 19, 2012, with three judges recused, Pet.App.46-47. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 101(b) of the Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb, is reproduced in full in the addendum to this brief at 1a-11a, and provides in relevant part:

> **(f) Limitations on remedies**
>
> **(1) Class action limitations**
>
> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—
> (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security....

STATEMENT OF THE CASE

To prevent abusive practices and deter vexatious litigation, Congress and this Court have carefully limited the circumstances in which private plaintiffs may bring claims for damages under the federal securities laws. In the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Congress imposed heightened pleading standards in federal securities fraud cases and placed restrictions on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4. This Court has also held, in a series of cases, that claims under Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder may be brought only by certain plaintiffs—those who bought and sold securities (not mere holders), *see Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975)—and against only certain defendants—primary wrongdoers (not alleged aiders and abettors or other third parties), *see Stoneridge Inv. Partners v. Scientific-Atlanta*, 552 U.S. 148 (2008); *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994).

Many plaintiffs' attorneys sought to evade these restrictions by abandoning federal claims altogether and instead redirecting cases to state courts via class-action complaints limited to state-law claims. Congress responded in 1998 by enacting the Securities Litigation Uniform Standards Act ("SLUSA"), which precludes any state law class or mass action alleging "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). This Court has emphasized that a

"broad construction" of SLUSA is critical in light of "the particular concerns that culminated in SLUSA's enactment"—namely, preventing circumvention of the PSLRA. *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71, 86 (2006). In construing the meaning of SLUSA's "in connection with" requirement, the Court has held that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Id.* at 85.

This case arises out of the massive Ponzi scheme perpetrated by Robert Allen Stanford and his affiliated corporate entities. Respondents purchased certificates of deposit ("CDs") from the Antigua-based Stanford International Bank ("SIB") based on, among other things, misrepresentations by Stanford and SIB that the CDs were safe and secure because SIB invested its assets in highly liquid, publicly traded securities. The SIB CDs became worthless when the Stanford Ponzi scheme imploded.

Because Allen Stanford and his affiliated companies were insolvent and in receivership, Respondents sought out deep-pocketed third parties with any remote connection to Stanford or SIB. For example, Petitioners Willis Limited and Willis of Colorado (collectively, "Willis"), and Bowen, Miclette & Britt ("BMB") are insurance brokers that helped SIB purchase ordinary commercial insurance policies needed for its day-to-day operations. That insurance was completely unrelated to the CDs. Petitioner SEI Investments Company ("SEI") merely provided a Stanford affiliate with back-office services such as computer services and automated investment

processing through SEI's proprietary computer system. Despite the remote connection between Petitioners and Stanford, Respondents have filed class- and mass-action complaints under state law seeking to hold Petitioners liable for billions of dollars of losses caused by Stanford's misconduct.

Respondents' counsel has boasted that he intentionally pled only state-law claims in order to "get around" the PSLRA and federal-law limitations on suing defendants only remotely connected to the primary wrongdoer.[1] In short, Respondents did *precisely* what SLUSA sought to prevent: they filed class- and mass-action complaints under state law, alleging claims in connection with securities transactions that, if brought under federal law, would have been subject to the PSLRA's requirements (such as heightened pleading standards), not to mention the limits on private claims against third parties set forth by this Court in *Stoneridge* and *Central Bank*.

The district court held that Respondents' class-action claims were barred by SLUSA because Respondents alleged that they were induced to purchase SIB CDs based, at least in part, on misrepresentations that their funds would be used to purchase SLUSA-covered securities. The Fifth Circuit reversed even though the court readily acknowledged that the Stanford entities used misrepresentations about SLUSA-covered securities to advance their Ponzi scheme. Rather than stopping

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[1] Julie Triedman, *Fifth Circuit Green-Lights $7 Billion Claims Against Proskauer, Other Stanford Advisers*, AmLaw Daily (Mar. 20, 2012).

there and dismissing the suit because SLUSA's plain terms were satisfied, the court found SLUSA inapplicable based on *other* alleged misrepresentations that did not relate to SLUSA-covered securities. Even though Respondents' complaints highlighted the significance of the alleged misrepresentations regarding covered securities, the court of appeals reasoned that those other allegations rendered the allegations of misrepresentations about covered securities too "tangential" to satisfy SLUSA.

A. Congress' Efforts To Prevent Abusive Practices in Securities Litigation

Congress enacted the Private Securities Litigation Reform Act of 1995, P.L. No. 104-67, 109 Stat. 737, to combat numerous abusive practices involving securities class-action suits. According to the House Conference Report, "nuisance filings, targeting of deep-pocket[ed] defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant." *Dabit*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). The PSLRA sought to prevent these practices by, *inter alia*, imposing heightened pleading standards in federal securities fraud cases, authorizing a stay of discovery pending a motion to dismiss, imposing restrictions on the selection and compensation of lead plaintiffs, creating a "safe harbor" for forward-looking statements, and placing limits on recoverable damages and attorneys' fees. *See* 15 U.S.C. §§ 77z-1, 78u-4; *see also Tellabs v. Makor Issues & Rights*, 551 U.S. 308, 324 (2007)

(construing PSLRA to effectuate its purpose of "screen[ing] out frivolous suits").

Before Congress enacted the PSLRA, "there was essentially no significant securities class action litigation brought in State court." H.R. Rep. No. 105-803, at 14 (1998) (Conf. Rep.). In response to the PSLRA, however, many plaintiffs' lawyers sought to "exploit[] differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the [PSLRA's] procedural or substantive protections against abusive suits [is] available." *Id.* at 14-15; *see id.* at 14 (plaintiffs "'resort[ed] to state court to avoid the new, more stringent requirements of federal cases'"). Indeed, the decrease in securities litigation in federal court in the wake of the PSLRA was offset by an "'almost equal increase'" in state-court litigation, which no one thought was a mere coincidence. *Id.* at 14.

Congress responded by enacting SLUSA in 1998 to "prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives" of the PSLRA. *See* SLUSA, P.L. No. 105-353 §§ 2(2), (5), 112 Stat. 3227.[2] The central provision of SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may

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[2] SLUSA amended both Section 16 of the Securities Act of 1933, *see* 15 U.S.C. § 77p, and Section 28(f) of the Securities Exchange Act of 1934, *see* 15 U.S.C. § 78bb(f). Those amendments are "substantially identical." *Dabit*, 547 U.S. at 82 n.6 For ease of reference Petitioners will cite only the amendments to the Exchange Act.

be maintained in any State or Federal court by any private party alleging— (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). A "covered security" is a publicly traded security listed on a regulated national exchange. *Id.* § 78bb(f)(5)(E). And a "covered class action" is a lawsuit, or group of lawsuits filed in the same court involving common questions of law or fact, in which damages are sought on behalf of more than 50 people. *Id.* § 78bb(f)(5)(B).

SLUSA does not preempt substantive state securities law or force individual plaintiffs to assert federal-law claims. Instead, SLUSA precludes certain *class actions* brought under state law that involve covered securities. *See Kircher v. Putnam Funds Trust*, 547 U.S. 633, 636 n.1 (2006). Covered class actions brought in federal court under state law may be dismissed outright, while claims brought in state court may be removed to federal court and then dismissed. *See* 15 U.S.C. § 78bb(f)(1)-(2). But the possibility of individual state-law claims or federal-court class actions that comply with the PSLRA and other federal-law requirements remains.[3]

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[3] SLUSA thus does not "deny any individual plaintiff, or indeed any group of fewer than 50 plaintiffs, the right to enforce any state-law cause of action that may exist." *Dabit*, 547 U.S. at 87. The statute further provides that "nothing in this subsection may be construed to preclude a State or political subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf." 15 U.S.C. § 78bb(f)(3)(B)(i); *see id.* § 78bb(f)(4) (preserving state jurisdiction to "investigate and bring enforcement actions").

This Court has emphasized that a "broad construction" of SLUSA is warranted in light of "ordinary principles of statutory construction" as well as "the particular concerns that culminated in SLUSA's enactment." *Dabit*, 547 U.S. at 86. Given Congress' concerns with lawyers' use of artful pleading to escape federal court and evade Congress' intent in the PSLRA, SLUSA's "in connection with" requirement must be construed broadly. *Id.* at 85-86. Moreover, SLUSA deliberately employed the capacious phrase "in connection with," which had already been given a broad interpretation in the context of Section 10(b) of the Securities Exchange Act and Rule 10b-5. *Id.* at 84-86.

SLUSA also serves to prevent plaintiffs from using the state-law class-action vehicle to sidestep the limitations this Court has imposed on third-party liability under federal securities laws. In *Central Bank*, 511 U.S. at 191, the Court held that "a private plaintiff may not maintain an aiding and abetting suit under § 10(b)" of the Exchange Act. And in *Stoneridge*, 552 U.S. at 158, the Court reaffirmed *Central Bank* and held that "[t]he conduct of a secondary actor must satisfy each of the elements or preconditions for liability" under Section 10(b). SLUSA ensures that plaintiffs cannot evade these precedents in cases involving nationally traded, "covered" securities through the simple expedient of asserting only state-law claims.

B. The Stanford Ponzi Scheme

In February 2009, the Securities and Exchange Commission ("SEC") brought suit under the federal securities laws against Allen Stanford and numerous

Stanford-affiliated corporate entities, alleging that Stanford had perpetrated a massive Ponzi scheme. *See* First Amended Complaint, *SEC v. Stanford Int'l Bank*, No. 3:09-cv-298 (N.D. Tex. Feb. 27, 2009) ("SEC Complaint").

Stanford's fraudulent scheme involved sales of CDs issued by the Antigua-based Stanford International Bank. SIB enjoyed a high volume of CD sales by promising above-market returns and assuring investors that the bank's assets were invested in a "well-balanced global portfolio of marketable financial instruments," including "U.S. and international securities." SEC Complaint ¶ 44. For example, SIB's marketing brochures for the CDs emphasized that SIB's investment in "marketable securities" allowed it to "maintain[] the highest degree of liquidity," which was a "protective factor for our depositors." *Id.* ¶ 45. And Stanford financial advisors conveyed to clients that the "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." *Id.* ¶ 46.

In reality, however, Allen Stanford used the proceeds from SIB's CD sales to finance his lavish lifestyle and to invest in highly speculative real estate projects in various Caribbean countries, and to keep the Ponzi scheme going by making "interest" and redemption payments to earlier investors. The SEC alleged multiple violations of, *inter alia*, Section 10(b) of the Securities Exchange Act and Rule 10b-5. *See* U.S. Amicus Br. 5 n.3. The district court recently entered summary judgment against Stanford, SIB, and Stanford Group Company, ordered disgorgement

of $6.7 billion, and imposed a $5.9 billion civil penalty. *See* Order, *SEC v. Stanford Int'l Bank*, No. 3:09-cv-298 (N.D. Tex. Apr. 25, 2013). Allen Stanford also faced criminal charges arising from his Ponzi scheme. He was convicted in March 2012 on 13 counts of fraud, conspiracy, and obstruction of justice, and was sentenced to 110 years in prison.

C. Respondents' Complaints

Respondents are individuals and companies that purchased SIB CDs through Stanford subsidiaries in the United States, Mexico, and Venezuela, and lost their investments when the Stanford Ponzi scheme collapsed. Allen Stanford and SIB are now insolvent and in receivership. Respondents and other plaintiffs thus cast a wide net in pursuing deep-pocketed defendants with any connection whatsoever to Stanford-affiliated entities. In this regard, they have sued a number of financial services firms, law firms, insurance companies, insurance brokers, and other companies that are alleged to have some connection to Stanford or SIB. These defendants unquestionably would be too remote to sue under Section 10(b) and Rule 10b-5 under this Court's holdings in *Stoneridge* and *Central Bank*.

In July 2009, the Willis Respondents—a group of Mexican and Venezuelan citizens—filed a class-action complaint in U.S. District Court for the Northern District of Texas against Willis and BMB. *See* JA 612-770 ("Willis/BMB Complaint"). Willis and BMB are insurance brokers that assisted SIB in its purchase of ordinary commercial insurance policies for SIB's operations. There is no allegation in the complaint that Willis or BMB knew about

Stanford's Ponzi scheme, sold the fraudulent CDs, or profited in any manner from the sale of the CDs or from the Ponzi scheme. Rather, Willis and BMB merely placed ordinary commercial insurance policies for SIB from Lloyd's of London, in exchange for standard brokerage fees.

The Willis Respondents' complaint is limited to Texas state-law claims, including alleged violations of the Texas Securities Act and Texas Insurance Code, as well as various common-law claims. The complaint clearly and repeatedly alleges that Stanford and his affiliated companies made misrepresentations about SLUSA-covered securities and that these misrepresentations were a material part of Stanford's scheme. Respondents allege that "Stanford Financial led Plaintiffs, verbally and through written marketing materials . . . to believe that their money was being invested in safe, liquid investments that were insured, *which was a material misstatement*." Willis/BMB Complaint ¶ 180 (JA 715) (emphasis added); *see id.* ¶ 34 (JA 628) (Respondents were led to believe that "SIB, through Stanford Financial, invested the money [from CD sales] in safe, secure and liquid assets"). Respondents also reference SIB's marketing materials, which state that SIB invested "the greater part of its assets" in "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity and credibility)." *Id.* Ex.2 (JA 744).

The complaint further alleges that Willis and BMB aided and abetted Stanford's fraudulent scheme by drafting one-page letters confirming that SIB had

purchased directors-and-officers liability insurance and a bankers' blanket bond from Lloyd's of London. *See* Willis/BMB Complaint ¶¶ 75-90 & Ex.4 (JA 649-57, 751-66). Other than writing those letters, Respondents do not allege that Willis or BMB had any role in developing, marketing, or selling the SIB CDs. There is likewise no allegation that Willis or BMB profited from the SIB CDs or from the Ponzi scheme.

Instead, Respondents suggest that Willis and BMB are liable for all of their losses because they *failed to detect* Stanford's fraud—something even the SEC was unable to do for more than a decade. Nevertheless, under secondary liability principles, Respondents seek to recover from Willis and BMB "well in excess of $7 billion" in damages—*i.e.*, the entire amount investors lost in the Stanford Ponzi scheme. *Id.* ¶¶ 185-86, 208 (JA 718-19, 733).

The SEI Respondents filed two nearly identical actions against Petitioner SEI in Louisiana state court in August 2009. Those complaints (styled as *Roland v. Green* and *Farr v. Green*) were brought by more than 80 individual purchasers of SIB CDs who asserted a single claim against SEI under the Louisiana Securities Law. The complaints allege that Stanford employees induced Respondents to purchase SIB CDs through misrepresentations that SIB's assets were "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies, and major international banks." Roland Complaint ¶ 36 (JA 253-54); Farr Complaint ¶ 38 (JA 345). According to the complaints, the

"liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." *Id.*

Respondents seek to hold SEI liable for Stanford employees' misrepresentations even though no Respondent identified SEI as playing any role in their decision to purchase SIB CDs. *See* Roland Complaint ¶ 112 (JA 279-80) (alleging that SEI is "directly liable for fraud" because it participated in a "fraudulent scheme"); *id.* ¶ 200 (JA 300); Farr Complaint ¶ 203 (JA 393-94) (alleging that "SEI has liability under the Louisiana Securities Law based upon § 714(B)," the secondary liability section of the statute). Respondents allege that SEI had a contract with a Stanford affiliate to provide back-office services such as "investment processing," "fund processing," and "business outsourcing solutions" through SEI's proprietary computer software system. Roland Complaint ¶ 101 (JA 275).

After the two actions against SEI were removed to the Middle District of Louisiana, they were transferred by the Judicial Panel on Multi-district Litigation to the Northern District of Texas. The actions were consolidated by the district court under the caption of *Roland v. Green*, No. 10-cv-224 (N.D. Tex.), and—as a mass action of more than 50 plaintiffs—together satisfy the statutory definition of a "covered class action" under SLUSA. 15 U.S.C. § 78bb(f)(5)(B)(ii).

D. The District Court's Decision

The district court dismissed the complaints against Willis, BMB, and SEI, holding that SLUSA applies to Respondents' state-law class- and mass-

action claims. The court held in *Roland v. Green* that the claims against SEI were precluded, Pet.App.54-75, and it subsequently applied the same reasoning to dismiss Respondents' claims against Willis and BMB, Pet.App.76-77. In so ruling, the court found the "in connection with" requirement easily met because Respondents were "induced" to invest in SIB CDs by SIB's misrepresentations and because perpetration of the alleged fraud "coincided with and depended on" SIB's misrepresentations about investments in covered securities. Pet.App.66-68.

Respondents argued that SLUSA was categorically inapplicable because the SIB CDs were not themselves covered securities. The district court acknowledged that "the SIB CDs are not SLUSA-covered securities," but emphasized that this fact "does not end the SLUSA inquiry." Pet.App.62. As the district court explained, this Court has expressly rejected the argument that "'an alleged fraud is "in connection with" a purchase or sale of securities only when the plaintiff himself was defrauded into purchasing or selling particular securities.'" Pet.App.62-63 (quoting *Dabit*, 547 U.S. at 85). The court thus concluded that "SLUSA do[es] not require actual dealing in ascertainable securities." Pet.App.63 (citing *Grippo v. Perazzo*, 357 F.3d 1218, 1223 (11th Cir. 2004)).

Turning to the question presented here, the district court noted that "[c]ourts have come to varying conclusions on what 'in connection with' requires." Pet.App.61. In light of "this mélange of opinions and in the apparent absence of controlling Fifth Circuit authority," the district court chose to

apply the Eleventh Circuit's test, which asks whether the plaintiffs' claims are premised on either "'fraud that induced [the plaintiffs] to invest with [the defendants] ... or a fraudulent scheme that coincided and depended upon the purchase or sale of securities.'" Pet.App.65 (quoting *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) ("*IPM*")).

In applying the Eleventh Circuit's test, the district court noted that the complaint alleges that "SIB led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities." Pet.App.66-67. In particular, SIB "claimed to have invested its portfolio at least in part in SLUSA-covered securities," which "helped explain the CDs' purported low-risk/high-yield nature." Pet.App.67. Those misrepresentations, in turn, "induced the Plaintiffs to purchase SIB CDs." Pet.App.66. The district court thus had little difficulty concluding that the alleged misrepresentations were made "in connection with" the purchase or sale of a covered security.

The district court also relied upon numerous other district court decisions holding that SLUSA applied to suits arising out of the Bernard Madoff Ponzi scheme. As the court explained, "[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit." Pet.App.67-68 n.12.[4] And, like

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[4] Two Madoff-related cases declined to apply SLUSA but the district court concluded that these decisions were "distinguishable and represent a minority approach." Pet.App.68 n.12.

Madoff, Stanford promised above-market returns that "ostensibly were produced by and directly attributable to [] investing in a portfolio that a reasonable investor would conclude contained SLUSA-covered securities." *Id.* Any suit against third parties arising out of those schemes necessarily involved misrepresentations "in connection with" SLUSA-covered securities transactions.

The district court accordingly held that SLUSA "precludes this action" against SEI. Pet.App.75. Citing its decision in *Roland*, the district court also dismissed Respondents' state law covered class actions against Willis and BMB, without prejudice to re-filing individual claims. Pet.App.76-77.

E. The Fifth Circuit's Decision

Both the Willis Respondents and the SEI Respondents appealed the district court's decision. The Fifth Circuit consolidated the appeals and reversed. In articulating its view of the meaning of "in connection with" under SLUSA, the court described the test set forth in *Dabit*—that the alleged fraud must "coincide" with a covered securities transaction—as "not particularly descriptive." Pet.App.17. The Fifth Circuit thus canvassed the disparate decisions of other courts in an effort to formulate a standard. Pet.App.16-30.

The Fifth Circuit described the Eleventh Circuit's test—which asks "whether the plaintiffs thought they were investing in covered securities or investing because of (representations about) transactions in covered securities"—as a "good starting point." Pet.App.30-31. The court, however, concluded that this standard "asks the wrong

question" because it "unnecessarily imports causation into a test whose language ('coincide') specifically disclaims it." Pet.App.31-32. The court also described the Eleventh Circuit's test—and the Second Circuit's similar standard, *see Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010)—as "too stringent" and "too high a bar." Pet.App.32-33.

The Fifth Circuit instead found the "best articulation" of the "in connection with" requirement to be the Ninth Circuit's test, under which "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are *more than tangentially related*." Pet.App.33 (quoting *Madden v. Cowen & Co.*, 576 F.3d 957, 965-66 (9th Cir. 2009)). The Fifth Circuit believed that this formulation would ensure that the "in connection with" requirement was not "'construed so broadly as to [encompass] every common-law fraud that happens to involve [covered] securities.'" Pet.App.33 (quoting *SEC v. Zandford*, 535 U.S. 813, 820 (2002)).

Although the court purported to apply the Ninth Circuit's test, its application of that test yielded a result not even the Ninth Circuit would have sanctioned. That is, the Fifth Circuit readily acknowledged that "the CDs' promotional material touted that SIB's portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies and major international banks.'" Pet.App.36.[5] However,

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[5] The Fifth Circuit twice stated that the "Willis Defendants" and SEI had made representations to Respondents about SIB's purported investments in a "well-diversified portfolio of highly

instead of stopping its SLUSA analysis at that point, the court found it significant that this was "but one of a host of (mis)representations made to the Appellants in an attempt to lure them into buying the worthless CDs." Pet.App.36-37 (footnote omitted).

Thus, even though Respondents' complaints alleged misrepresentations about the purchase or sale of covered securities, the Fifth Circuit held that those allegations were not dispositive because they were only "tangentially related" to the "heart," "crux," or "gravamen" of the alleged fraud. Pet.App.37-38. The court reached this conclusion even though the complaints acknowledged that the misrepresentations about the liquidity and marketability of SIB's invested assets were so important that, had plaintiffs "'been aware of the truth' that SIB's 'portfolio consisted primarily of illiquid investments or no investments at all,' they 'would not have purchased the SIB CDs.'" Pet.App.12; *see also* Roland Complaint ¶¶ 34-39 (JA 253-55); Farr Complaint ¶¶ 36-41 (JA 345-47). In sum, the Fifth Circuit held that SLUSA did not apply because the fact that "the CDs were marketed with some vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities

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marketable securities." Pet.App.8-10, 36-37 n.3. That is demonstrably false, as those misrepresentations were made solely by Allen Stanford and his affiliated companies, not by Willis, BMB, or SEI. *See* Willis/BMB Complaint ¶ 180 (JA 715); Roland Complaint ¶ 34 (JA 253); Farr Complaint ¶ 38 (JA 345). But this mistake is ultimately irrelevant, as Respondents' claims are precluded regardless of who made this alleged misrepresentation about covered securities. *See infra* Section I.

seems tangential to the schemes advanced by the SEI and Willis Defendants." Pet.App.38.

Willis, BMB, and SEI subsequently filed petitions for rehearing en banc, which the court of appeals denied on April 19, 2012, with three judges (then-Chief Judge Jones, Judge Smith, and Judge Haynes) recused. Pet.App.46-47. This Petition followed. The Court called for the views of the Solicitor General on October 1, 2012, and granted certiorari on January 18, 2013.

SUMMARY OF ARGUMENT

The Fifth Circuit's decision cannot be squared with either the plain text of SLUSA or this Court's consistently broad interpretation of the phrase "in connection with." Allowing Respondents' state-law class-action claims to proceed would also be contrary to Congress' policy goals in SLUSA and the PSLRA, as well as this Court's jurisprudence carefully limiting private securities liability for third-party actors such as purported aiders and abettors. SLUSA was designed as an anti-circumvention provision, and giving "in connection with" the broad meaning its plain language suggests is critical to achieving Congress' goal.

I.A. SLUSA bars private litigants from bringing state-law class-action claims alleging "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). This Court has repeatedly held that the phrase "in connection with" must be given a "broad interpretation," *Dabit*, 547 U.S. at 85, and must be construed "'flexibly, not technically and restrictively,'" *Zandford*, 535 U.S. at

821. A broad construction is particularly critical in the SLUSA context for Congress to achieve its anti-circumvention objective.

In their complaints, Respondents plainly allege misrepresentations in connection with SLUSA-covered securities transactions. Indeed, this is a straightforward case in which the plaintiffs allege misrepresentations *about* covered securities. Such allegations plainly trigger SLUSA preclusion. The core of the Stanford Ponzi scheme involved sales of CDs that promised stable, above-market returns with little risk because the CDs were purportedly backed by investments in highly liquid, publicly traded securities—*i.e.*, SLUSA-covered securities. High returns are alluring to investors, but what is well-nigh irresistible is the promise of high returns *and* low risk, and the misrepresentations about SLUSA-covered securities were critical to the low-risk part of the pitch. There is no question about how critical these misrepresentations were to the scheme, as Respondents themselves characterize these misrepresentations as "material" in their complaints. Without those material misrepresentations about SLUSA-covered securities, the whole scheme never could have succeeded.

It is irrelevant for purposes of SLUSA that the misrepresentations about covered securities were made by the primary fraudsters (Allen Stanford and SIB) rather than by Petitioners. SLUSA broadly precludes state-law class actions alleging *any* "misrepresentation or omission" in connection with a covered securities transaction; it does not limit preclusion to cases in which the *defendant* made the

alleged misstatement. Because Respondents have unquestionably alleged "a" misrepresentation in connection with a covered securities transaction, it simply does not matter whether that alleged misrepresentation was made by "the [defendant] *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added).

B. The Fifth Circuit readily acknowledged that Respondents' complaints alleged misrepresentations *about* SLUSA-covered securities. That should have been the end of the matter. The court nonetheless refused to find SLUSA preclusion, holding instead that the misrepresentations about SLUSA-covered securities were too "tangential" to the "gravamen" or "crux" of the fraudulent scheme to give rise to preclusion.

That holding is wrong on both the facts and the law. On the facts, the misrepresentation that SIB would invest proceeds from the CD sales in safe, liquid securities was hardly "tangential," as it was critical to Stanford's ability to lure new investors into the Ponzi scheme. Indeed, Respondents themselves describe this as a "material" misrepresentation.

On the law, the Fifth Circuit's approach to SLUSA cannot be squared with the plain text of the statute, which precludes any state-law class action alleging "a" misrepresentation or omission in connection with the purchase or sale of a covered security. 15 U.S.C. § 78bb(f)(1)(A). A single covered misrepresentation is sufficient to trigger preclusion, and nothing in the statute allows a plaintiff to escape preclusion by larding up the complaint with *additional* misrepresentations that are farther

removed from a covered securities transaction. The Fifth Circuit effectively rewrote the statute by limiting SLUSA preclusion to complaints that *predominantly* allege misrepresentations in connection with SLUSA-covered securities. That narrow interpretation of SLUSA is directly contrary to the language of the statute, and is especially unwarranted in light of SLUSA's evident purpose to prevent the circumvention of the PSLRA. There is simply no reason to construe straightforward and purposely broad language to create an opportunity and incentive for creative lawyers to plead around SLUSA by padding a complaint with additional allegations in hopes of rendering allegations about covered securities "tangential." SLUSA unquestionably makes one material misrepresentation "in connection with" covered securities enough.

The Fifth Circuit further held that its decision was "bolstered" by the fact that the SIB CDs were not themselves SLUSA-covered securities and were not directly linked to the returns on covered securities. But that simply misreads the statute. Under the plain text of SLUSA, it is the misrepresentation—not the plaintiff's form of investment—that must be "in connection with" a covered securities transaction. As this Court held in *Dabit*, and as numerous lower courts have recognized, SLUSA does not require actual *dealing* in covered securities as long as the alleged scheme involved a *misrepresentation* about the purchase or sale of such securities. There is no reason to complicate that straightforward statutory requirement.

II. Allowing Respondents' state-law class-action claims to proceed would undermine Congress' policy judgments in SLUSA and the PSLRA, as well as this Court's decisions in *Stoneridge* and *Central Bank*.

This Court has repeatedly refused to extend private liability under the federal securities laws to third-party actors far removed from any actual fraud, such as alleged aiders and abettors. Yet, here, Respondents are seeking to make a virtue out of the fact that they have sued defendants further removed from the core of the fraud—defendants with only a tangential relationship to the misrepresentations about covered securities that are central to Respondents' theory of recovery. That gets matters backwards. SLUSA was designed to prevent the circumvention of the PSLRA and other rules limiting private federal securities actions. Although Congress did not intend to reach state-law claims wholly unconnected to misrepresentations about covered securities, Congress certainly did not try to preserve plaintiffs' ability to bring claims that are the *least* meritorious in the eyes of federal law. In *Dabit*, this Court rejected a similar effort to carve out "holder" claims—long disfavored under federal law—from SLUSA's scope. There is no reason why claims *against* tangential defendants should fare better than claims *by* tangential plaintiffs.

Respondents' lawyers have explicitly acknowledged that they engaged in the exact type of gamesmanship that SLUSA was intended to prevent—namely, the use of state-law securities suits to evade restrictions on federal securities claims. If Respondents had sued Petitioners pursuant to the

implied right of action under Rule 10b-5, they would have been subject to the heightened pleading standards and other requirements of the PSLRA, as well as this Court's decisions in *Stoneridge* and *Central Bank*. Knowing they would not be able to proceed in that manner, Respondents limited their complaints to state-law securities claims that are not bound by these strictures. This is not conjecture. After the Fifth Circuit validated this stratagem, Respondents' counsel boasted that his goal had been to use artful pleading to "get around" *Central Bank* and *Stoneridge*. This is *precisely* what Congress intended to prevent when it enacted SLUSA, and the capacious "in connection with" language it employed should have precluded such gamesmanship. The decision below should be reversed.

ARGUMENT

I. SLUSA Precludes Respondents' State-Law Class-Action Claims.

SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging . . . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). There is no dispute that Respondents are seeking to bring "covered class action[s]" under Texas and Louisiana state law alleging "a misrepresentation or omission of a material fact." The sole issue in this case is whether Respondents' complaints allege misrepresentations or omissions "in connection with" the purchase or sale of a covered security. They

plainly do, and the Fifth Circuit's reasons for finding those allegations insufficient to trigger SLUSA preclusion do not withstand scrutiny.

A. Respondents' Claims Are Precluded Under the Plain Text of SLUSA and a Straightforward Application of *Dabit*.

1. When Congress enacted SLUSA in 1998, it did not write on a blank slate. The phrase "in connection with the purchase or sale of any security" has been a prominent feature of the federal securities laws for decades, appearing in both Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5. As this Court recognized in *Dabit*, Congress clearly intended SLUSA to incorporate settled law adopting a broad reading of "in connection with." Indeed, "not only did Congress [in SLUSA] use the same words as are used in § 10(b) and Rule 10b-5, but it used them in a provision that appears in the same statute as § 10(b)." *Dabit*, 547 U.S. at 86; *see also Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) (when "judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well").

Each time this Court has "sought to give meaning" to the phrase "in connection with" in the context of the federal securities laws, it has "espoused a broad interpretation." *Dabit*, 547 U.S. at 85. And the Court has repeatedly emphasized that this capacious language must be construed "'flexibly, not technically and restrictively.'" *Zandford*, 535

U.S. at 821 (quoting *Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971)). After all, any limits on the scope of "in connection with" would not only artificially constrict SLUSA, but also limit the SEC's authority to pursue novel types of wrongdoing in the securities markets.

A broad construction is thus "'practically essential'" because "practices 'constantly vary and . . practices legitimate for some purposes may be turned to illegitimate and fraudulent means.'" *Bankers Life*, 404 U.S. at 12. The temptation to dupe investors is ever-present and would-be manipulators and scam artists are nothing if not creative. Thus, to ensure that the next generation of Madoffs and Stanfords do not outfox both investors and the SEC, it is essential that "in connection with" be given its full, broad scope.

In *Dabit*—this Court's sole decision addressing the substantive scope of SLUSA—the Court rejected an attempt to read artificial limitations into the broad text of the statute. The plaintiffs in that case brought state-law "holder" claims alleging that the defendants' misrepresentations caused them to refrain from selling overvalued securities. 547 U.S. at 76. The plaintiffs argued that these misrepresentations were not "in connection with" a SLUSA-covered securities transaction because, as mere "holders," they did not actually buy or sell securities in response to the alleged misrepresentations.

This Court unanimously rejected that cramped interpretation of SLUSA, reiterating that a "broad construction" of the preclusion provision was

warranted in light of "the particular concerns that culminated in SLUSA's enactment." *Id.* at 86. The Court thus held that it is "enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff *or by someone else*." *Id.* at 85 (emphasis added). The "requisite showing" is "'deception in connection with the purchase or sale of any security, not deception of an identifiable purchaser or seller.'" *Id.* at 85; *see also id.* at 89 (SLUSA preclusion does not turn on "the identity of the plaintiffs").

In reaching its holding, the Court emphasized that the express purpose of SLUSA was to prevent plaintiffs from using state-law claims to evade Congress' restrictions on private liability under federal law, and "[a] narrow reading of the statute would undercut the effectiveness of the [PSLRA]." *Id.* at 86; *see also id.* at 78 ("the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated"). In short, this Court has always construed "in connection with" broadly, and the anti-circumvention objective of SLUSA only underscores the need for a broad construction. *See, e.g., Morse v. Republican Party of Virginia*, 517 U.S. 186, 215 (1996) (rejecting interpretation that "permits precisely the kind of circumvention of congressional policy that [the statute] was designed to prevent").

Dabit's holding is consistent with this Court's earlier decisions interpreting Section 10(b) and Rule 10b-5. *See* Pet.App.62-63 & n.8. In *Bankers Life*, the Court found the "in connection with" requirement satisfied because the plaintiff had suffered an injury

as a result of deceptive practices "touching" securities transactions. 404 U.S. at 12-13. The Court concluded that the fraud and the securities transaction did not need to occur simultaneously, as long as the scheme as a whole involved both a material misrepresentation and the purchase or sale of a security. *Id.*

Similarly, in *Zandford*, the defendant was a stockbroker who misappropriated his clients' funds by selling securities from their accounts and diverting the proceeds to his own use. 535 U.S. at 815-16. Even though the defendant's conduct did not affect the plaintiff's trading decisions or the price of any publicly traded security, the Court concluded that the "in connection with" requirement was satisfied because the fraudulent scheme and the securities transactions were "not independent events." *Id.* at 820-21. As the Court subsequently reiterated in *Dabit*, it was "enough" that the scheme to defraud "coincide[d]" with securities transactions. *Id.* at 822.

2. In their complaints, Respondents have unquestionably alleged misrepresentations that "coincide" with or "touch" SLUSA-covered securities transactions. Indeed, Respondents have alleged misrepresentations *about* covered securities, which makes this a straightforward case for SLUSA preclusion. *See* U.S. Amicus Br. 12 ("False statements about one's own transactions in covered securities are naturally characterized as misrepresentations in connection with the purchase or sale of such securities.").

Specifically, Respondents' complaint against Willis and BMB alleges that "Stanford Financial led Plaintiffs, verbally and through written marketing materials . . to believe that their money was being invested in *safe, liquid investments* that were insured, which was a *material misstatement* because the money was not invested in safe, liquid and fully insured investments." Willis/BMB Complaint ¶ 180 (JA 715) (emphasis added); *see also id.* ¶ 34 (JA 628) (Respondents were led to believe that "SIB, through Stanford Financial, invested the money [from CD sales] in safe, secure and liquid assets"). And SIB's marketing materials—which Respondents attached as an exhibit to the Complaint—falsely stated that SIB had invested "the greater part of its assets" in "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity, and credibility)." *Id.* Ex.2 (JA 744).[6]

The SEI Respondents similarly allege that Stanford investment advisors induced them to purchase SIB CDs through misrepresentations that proceeds from CD sales would be "'invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks.'" Roland Complaint ¶ 36 (JA253-54); Farr Complaint ¶ 38 (JA 345). Respondents were led to believe that SIB

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[6] SIB did not identify the specific "bonds" and "shares of stock" that were purportedly included in its portfolio, but the district court determined that any such portfolio would have necessarily included "SLUSA-covered securities." Pet.App.66 & n.11. Respondents did not challenge that finding on appeal, and the Fifth Circuit did not disturb the district court's holding on this issue.

invested its assets in "financial instruments" that could be "readily liquidated to provide redemption payments . . . on the SIB CDs." Roland Complaint ¶ 12 (JA 244); Farr Complaint ¶ 14 (JA 336).

These misrepresentations about SLUSA-covered securities were critical to the Stanford Ponzi scheme because they were what induced Respondents to purchase SIB CDs in the first place. The complaints identify these allegations as "material" to the scheme, *see* Willis/BMB Complaint ¶ 180 (JA 715), and they undoubtedly were. For any investor evaluating an income-producing financial instrument, whether it be a "plain vanilla" corporate bond or a complex mortgage-backed security, the source of the funds used to pay distributions is, of course, a critical consideration. This is particularly true when the quality of the issuer's investments (*i.e.*, its use of the invested capital) is the purported explanation for (as here) an above-market yield.

The promise of above-market returns is alluring, but investors typically consider both prospective returns and relative risks. *See, e.g.*, *SEC v. Infinity Grp.*, 212 F.3d 180, 191 (3d Cir. 2000) ("[T]he investors' beads were strung upon the gossamer guarantee of seemingly impossibly high returns at no risk."). Investors asked to send their money to an Antiguan bank, rather than an FDIC-insured U.S. bank, will naturally have concerns about the liquidity and security of the institution. The promised combination of security, liquidity, and above-market returns—which would be achieved through SIB's purported investment in SLUSA-

covered securities—was thus essential to recruiting new investors in the SIB CDs.

As the United States recognized, "only the assertions about covered securities would have answered investors' questions about *how* SIB would be able to deliver the promised high returns on the CDs—questions that any reasonable investor would have asked before buying a financial instrument from a foreign bank." U.S. Amicus Br. 11. Without those misrepresentations regarding SLUSA-covered securities, the entire Ponzi scheme could not have succeeded. *See id.* at 12 (Stanford and SIB's "misrepresentations about their own holdings were critical to the Stanford fraud.").[7]

It is perfectly sensible that SLUSA should apply here, as Stanford and SIB's misrepresentations about their investments in covered securities implicate "the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities." *Dabit*, 547 U.S. at 78. The publicly traded securities that are covered by SLUSA, Section 10(b), and Rule 10b-5 have a well-earned reputation for safety, liquidity, and strong returns. CDs issued by banks in exotic offshore locales do not. Through their false representations about SLUSA-covered

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[7] Respondents' allegations about investments in covered securities were also important as a matter of state substantive law. For example, a plaintiff can state a claim under the Louisiana Securities Law only if she was sold a "security," and that term does not include CDs. *See* La. R.S. § 51:702(15)(b)(ii). Any argument that the SEI Respondents have not alleged misrepresentations in connection with covered securities is thus tantamount to an admission that they cannot state a claim for relief under Louisiana state law.

securities, Stanford and SIB effectively misappropriated the reputation and goodwill of the U.S. securities markets in order to advance their fraudulent scheme. This is precisely the sort of conduct that Congress intended to come within the SEC's reach and to be governed by uniform "national standards for securities class action lawsuits." SLUSA § 2(5), 112 Stat. at 3227.

3. It is irrelevant for purposes of SLUSA that the alleged misrepresentations about covered securities were made by the primary fraudsters (Stanford and SIB) rather than by Petitioners (third parties far removed from any actual fraud). Allegations about misrepresentations by Stanford and SIB are not stray or tangential references, but are integral to Respondents' efforts to sue Petitioners. After all, Respondents specifically allege that Petitioners are "*responsible for all wrongdoing* done by . . other members of the conspiracy, including Allen Stanford, SIB, [and] Stanford Financial." Willis/BMB Complaint ¶ 186 (JA 719) (emphasis added). Respondents further allege that Petitioners are "directly liable for fraud" because they "aided and abetted and participated with Stanford Financial and SIB in a fraudulent scheme." *Id.* ¶ 185 (JA 718); *see also* Roland Complaint ¶¶ 101, 200 (JA 275, 300); Farr Complaint ¶¶ 105, 203 (JA 368, 393-94) (alleging that "SEI has liability under the Louisiana Securities Law based upon § 714(B)," the secondary liability provision).

Because Respondents seek to hold Willis and BMB vicariously liable for "all" of Stanford and SIB's wrongdoing (to the tune of $7 billion)—and to hold

SEI secondarily liable for the losses of each SEI Respondent—it is simply not possible to articulate a theory of why Petitioners should pay for the damage wreaked by Stanford's malfeasance without making allegations about Stanford's misrepresentations. And those misrepresentations by Stanford about covered securities are sufficient to trigger SLUSA preclusion.

Given that Respondents have unquestionably alleged "a" misrepresentation in connection with a covered securities transaction—namely, SIB's false statement that proceeds from CD sales would be invested in highly liquid, publicly traded securities—it simply does not matter whether that alleged misrepresentation was made by "the [defendant] *or by someone else*." *Dabit*, 547 U.S. at 85 (emphasis added). The "requisite showing" is "'deception in connection with the purchase or sale of any security, not deception [by] an identifiable [defendant].'" *Id.* at 85; *see id.* at 89 (SLUSA preclusion does not turn on "the identity of the [parties]").

B. The Fifth Circuit's Reasons for Denying Preclusion Lack Merit.

1. SLUSA applies even if the complaint alleges other misrepresentations that do not concern covered securities.

The Fifth Circuit readily acknowledged that Respondents' complaints involved misrepresentations about the purchase or sale of covered securities. Pet.App.36-37. Respondents allege that SIB falsely represented that its "portfolio of assets was invested in 'highly marketable securities issued by stable

governments, strong multinational companies and major international banks,'" Pet.App.36, and that Petitioners should be held liable for SIB's misconduct, Willis/BMB Complaint ¶¶ 185-86 (JA 718-19). The Fifth Circuit recognized that these misrepresentations about SLUSA-covered securities were critical to the Stanford fraud because they were used "to lure [Respondents] into buying the worthless CDs." Pet.App.36-37. Those findings should have been the end of the matter because misrepresentations *about* covered securities are clearly sufficient to satisfy the "in connection with" requirement and trigger SLUSA.

But the Fifth Circuit did not stop there. It instead concluded that the presence of *additional* alleged misrepresentations in Respondents' complaints somehow diluted the SLUSA-covered misrepresentations or rendered them "tangential." *See* Pet.App.37-39. In particular, the court found that the actual "heart" or "crux" of the Stanford scheme was "representing to [Respondents] that the CDs were a 'safe and secure' investment that was preferable to other investments" because of their "liquidity, consistently high rates of return, and the fact that . regulators were keeping a watchful eye on SIB." Pet.App.38. The Fifth Circuit thus concluded that the misrepresentations about SLUSA-covered securities were "but one of a host of (mis)representations made to Appellants" and "seem[] tangential to the schemes advanced by the SEI and Willis Defendants." Pet.App.36-38.

The Fifth Circuit's approach was fundamentally flawed on both the facts and the law. On the facts, as

the complaints make clear, the misrepresentations about the liquidity provided by the purported underlying investments in covered securities were critical to making Stanford's false claims about high returns and low risk credible. *See* Willis/BMB Complaint Ex.2 (JA 744); Roland Complaint ¶¶ 35-36 (JA 253-54); Farr Complaint ¶¶ 37-38 (JA 345). Respondents, the victims of the fraud, state that these misrepresentations were "material" to their being defrauded. Willis/BMB Complaint ¶ 180 (JA 715).

On the law, and even more to the point, the whole inquiry into whether representations about covered securities were central or peripheral is beside the point. SLUSA preclusion is triggered by *a* material misrepresentation about covered securities *vel non*. The centrality of such representations to the overall fraudulent scheme is irrelevant. And given that SLUSA's *raison d'etre* was the need to counteract clever attorneys who had effectively pled around the PSLRA, it would have been astonishing had Congress created an incentive for lawyers to lard up their complaints with additional allegations in hopes of rendering allegations about covered securities "tangential" by comparison.

In short, the question here is not whether the alleged misrepresentations were *material*—they plainly were—but whether they were made "in connection with" a SLUSA-covered securities transaction. They clearly were, and that suffices for SLUSA preclusion. Indeed, Respondents have never disputed the materiality of SIB's representations about SLUSA-covered securities. *See* Willis/BMB

Complaint ¶ 180 (JA 715) (misrepresentation that Respondents' money "was being invested in safe, liquid investments" was a "material misstatement"); Roland Complaint ¶¶ 34-39 (JA 253-55); Farr Complaint ¶¶ 36-41 (JA 345-47) (Respondents "would not have purchased the SIB CDs" if they had been "aware of the truth" that SIB's assets were not invested in "liquid financial instruments").

The correct approach is well-illustrated by Judge Sutton's opinion for the Sixth Circuit in *Segal v. Fifth Third Bank*, 581 F.3d 305 (6th Cir. 2009), *cert denied* 130 S. Ct. 3326 (2010). Like Respondents in this case, the plaintiff in *Segal* argued that the "gravamen" of his complaint involved garden-variety state-law fraud claims, and that any misrepresentations about covered securities were merely tangential to the defendant's "scheme." *Id.* at 311. But, as the Sixth Circuit explained, this is "not how SLUSA works." *Id.* The statute simply asks "whether the complaint *includes* these types of allegations [about covered securities], pure and simple." *Id.* (emphasis added).

The Sixth Circuit further noted that any inquiry into whether SLUSA-covered misrepresentations were too far removed from the "gravamen" of the fraud would be both "difficult . . . to implement" and contrary to this Court's instruction that SLUSA must be interpreted broadly. *Id.* at 312. Such an amorphous inquiry would be particularly misplaced in the kind of threshold inquiry demanded by SLUSA. *Cf. Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1193 (2010) (criticizing "[c]omplex jurisdictional tests" that "produce appeals and reversals, encourage

gamesmanship, and . . . diminish the likelihood that results and settlements will reflect a claim's legal and factual merits").

Put simply, courts "have no license to draw a line between SLUSA-covered claims that must be dismissed and SLUSA-covered claims that must not be." *Segal*, 581 F.3d at 311.[8] The fact that Respondents' complaints allege at least one material misrepresentation about SLUSA-covered securities was sufficient to trigger preclusion, regardless of whether the complaints also included *other* allegations that did not concern covered securities transactions.

2. SLUSA does not require actual dealing in covered securities.

The Fifth Circuit also mistakenly concluded that its holding was "bolstered" by the fact that the SIB CDs were not themselves covered securities under SLUSA and were not directly "tied to the success" of other covered securities. Pet.App.39.

Once again, that is far too narrow a reading of the "in connection with" requirement. SLUSA's text does not require that the plaintiff actually *invest* in covered securities. And, as this Court recognized in rejecting the argument that "holder" claims should escape SLUSA preclusion, the statute requires only that the misrepresentation coincide with the

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[8] The Fifth Circuit actually cited the Sixth Circuit's decision in *Segal* with approval, *see* Pet.App.32-33, but nonetheless proceeded to do what the Sixth Circuit expressly *refused* to do—namely, parse the complaint to determine whether otherwise-covered misrepresentations were too "tangential" to the "gravamen" of the fraud to give rise to preclusion.

purchase or sale of covered securities by "someone." *Dabit*, 547 U.S. at 85-86. Here, that "someone" was SIB, which induced Respondents to purchase CDs through misrepresentations about SIB's purported purchases of covered securities. *See supra* 28-31. The fact that Respondents purchased the CDs, rather than covered securities, is of no moment, especially because the alleged misrepresentations attempted to imbue the CDs with some of the qualities of covered securities, like liquidity and security. Nor does it matter that SIB did not actually purchase the covered securities—that is what makes their statements *mis*representations, but it does not render them any less "in connection with" covered securities.

Applying this Court's holding in *Dabit*, a number of lower courts have correctly recognized that SLUSA does not require actual *dealing* in covered securities as long as the *misrepresentation* is about such securities. As one district court explained, "[i]f a covered class action brought under state law concerns a transaction involving covered securities at all, it is subject to dismissal under SLUSA—even if it also involved non-covered securities or non-securities." *Scala v. Citicorp*, No. 10-3859, 2011 WL 900297, at *4 (N.D. Cal. Mar. 15, 2011). SLUSA turns on "what representations were made in soliciting the [investors'] funds," and it is "inconsequential that some or even all of the securities transactions may never have occurred." *Id.* at *5-*7.[9]

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[9] *See also Grippo v. Perazzo*, 357 F.3d 1218, 1223 (11th Cir. 2004) (finding "in connection with" requirement satisfied even

Courts have reached this same conclusion in cases arising out of the Bernard Madoff Ponzi scheme. The Madoff and Stanford schemes are analytically identical for purposes of SLUSA: in both sets of cases, investors were induced to purchase uncovered securities based on false representations about SLUSA-covered securities. *See* Pet.App.67-68 n.12 ("[b]oth Stanford and Madoff purported to take investors' funds and purchase covered securities for their investors' benefit"). In the Madoff context, the majority of courts have recognized that neither the fact that plaintiffs purchased uncovered securities nor the reality that Madoff never actually purchased the covered securities makes any difference for SLUSA purposes. The misrepresentation about covered securities suffices.

For example, in *In re Beacon Associates Litigation*, the plaintiffs argued that SLUSA did not apply to their claims against a Madoff "feeder fund" because they had merely purchased "LLC interests" that were not covered by SLUSA. 745 F Supp. 2d 386, 430 (2010). But, as Judge Sand explained, the proper inquiry involves consideration of the *entire fraudulent scheme*, not just the specific allegations

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though "no proof exists that a [covered] security was actually bought or sold"); *U.S. Mortgage, Inc. v. Saxton*, 494 F.3d 833, 844 (9th Cir. 2007) ("Plaintiffs in this case seek to avoid SLUSA dismissal by arguing that they did not purchase or sell any listed security in response to the misrepresentations, and that, therefore, they do not allege fraud in connection with the purchase or sale of a security. This is the very argument that *Dabit* rejected."); *Horattas v. Citigroup Fin. Mkts. Inc.*, 532 F. Supp. 2d 891, 901-03 (W.D. Mich. 2007) (SLUSA applies even if plaintiffs "did not buy or sell any securities").

against the third-party defendant. There was no question that Bernard Madoff had made misrepresentations that he would "purchase and sell [covered] securities," which was sufficient to trigger preclusion under SLUSA even though "the trades never took place." *Id.*[10]

The Fifth Circuit sought to distinguish the Madoff cases on the ground that the Madoff feeder funds were "pass-through vehicles" to invest in covered securities, while the fixed returns on SIB CDs were not *directly* tied to the success of any covered securities. Pet.App.39. But that distinction has no place in a broad statute that must be construed "flexibly, not technically and restrictively." *Zandford*, 535 U.S. at 821. If representations about covered securities were made in an effort to get potential investors to part with their money, then the

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[10] *Accord In re Herald, Primeo & Thelma*, No. 09-289, 2011 WL 5928952, at *5-*8 (S.D.N.Y. Nov. 29, 2011), *on appeal* No.12-156 (2d Cir.); *In re Merkin*, 817 F. Supp. 2d 346, 360-61 (S.D.N.Y. 2011); *In re Kingate Mgmt.*, No. 09-5386, 2011 WL 1362106, at *9 (S.D.N.Y. Mar. 30, 2011), *on appeal* No. 11-1397 (2d Cir.); *Backus v. Conn. Cmty. Bank*, 789 F. Supp. 2d 292, 302-06 (D. Conn. 2011); *Newman v. Family Mgmt.*, 748 F. Supp. 2d 299, 313 (S.D.N.Y. 2010), *on appeal* No. 11-622 (2d Cir.); *Wolf Living Trust v. FM Multi-Strategy Inv. Fund*, No. 09-1540, 2010 WL 4457322, at *3 (S.D.N.Y. Nov. 2, 2010). Two district court decisions held that SLUSA does not apply to claims against third parties arising out of the Madoff fraud. *See Levinson v. PSCC*, No. 09-269, 2010 WL 5477250 (D. Conn. Dec. 29, 2010); *Anwar v. Fairfield Greenwich*, 728 F. Supp. 2d 372 (S.D.N.Y. 2010). The district court in this case found those decisions to be distinguishable on their facts, *see* Pet.App.67-68 n.12, but in all events they appear to suffer from many of the same analytical flaws as the Fifth Circuit's decision.

concerns of SLUSA and the federal securities laws more broadly are fully implicated. Whether the returns are fixed or tied directly to underlying covered securities is an irrelevant detail. It would make no sense to lay down a rule that incentivizes the next generation of Ponzi artists to emulate Stanford rather than Madoff, when the clear message should be that neither "mentor" has provided a model to evade the reach of the federal securities laws.[11]

II. Allowing Respondents' Claims To Proceed Would Undermine Congress' Policy Judgments and This Court's Decisions in *Central Bank* and *Stoneridge*.

Any interpretation of SLUSA and its broad "in connection with" language necessarily must account for SLUSA's overriding purpose of preventing the circumvention of the PLSRA and sensible judicial constructions of the federal securities laws via artificial resort to state law. Congress was plainly aware that its efforts to reform private securities litigation in the federal courts had produced an unprecedented migration of securities claims to state court. Rather than applaud this development as an appropriate allocation of cases between the federal and state court systems, Congress plainly viewed this

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[11] In all events, Respondents allege that they expected *their own money* to be invested in SLUSA-covered securities, which makes this case materially indistinguishable from the Madoff feeder fund cases that have been found precluded. *See* Willis/BMB Complaint ¶ 34 (JA 628) (Respondents were told that "investments in the CDs were liquid and the CDs could be redeemed at any time because SIB, through Stanford Financial, *invested the money* in safe, secure and liquid assets") (emphasis added).

migration as an effort to circumvent the PSLRA and sensible judicial constructions of the federal securities laws. Congress was thus acutely aware of the capacity for enterprising lawyers to plead around its intended reforms and consciously chose the capacious "in connection with" language to limit efforts to plead around SLUSA.

The Court recognized this reality in *Dabit* by giving "in connection with" a broad construction to reflect "the particular concerns that culminated in SLUSA's enactment." 547 U.S. at 86. As the Court explained, "[a] narrow reading of the statute would undercut the effectiveness" of the Act. *Id.* In particular, this Court in *Dabit* avoided the counterintuitive conclusion that a particularly disfavored class of federal securities claims—"holder" claims involving plaintiffs who had neither bought nor sold securities during the relevant period—would escape SLUSA preclusion. Rather than make a SLUSA virtue out of what would otherwise be a vice, this Court recognized that SLUSA was designed to avoid pushing marginal federal securities claims into state courts and that its "in connection with" language was broad enough to capture claims brought by relatively tangential plaintiffs. The same logic is fully applicable to Respondents' avowed effort to avoid federal jurisdiction over claims seeking recovery for a massive Ponzi scheme against tangential defendants.

A. SLUSA Protection Is Especially Important for Third-Party Actors Far Removed from Any Actual Fraud.

This Court has long recognized that securities litigation "presents a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general." *Blue Chip Stamps*, 421 U.S. at 739. Securities fraud claims often have "a settlement value to the plaintiff out of any proportion to [their] prospect of success at trial" because "[t]he very pendency of the lawsuit may frustrate or delay normal business activity of the defendant." *Id.* at 740. Such claims impose "a social cost rather than a benefit" to the extent they permit "a plaintiff with a largely groundless claim to simply take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value, rather than a reasonably founded hope that the process will reveal relevant evidence." *Id.* at 741.

Concerns about vexatious litigation are even more pronounced when the defendants are third-party actors far removed from the actual fraud, such as alleged aiders and abettors. The claims here clearly illustrate the burdens that vexatious securities litigation can impose on third-party defendants. Because the actual perpetrators of the alleged fraud—Allen Stanford and his affiliated corporate entities—are all insolvent or in receivership, Respondents and other plaintiffs targeted deep-pocketed third-party actors with any

tangential connection to Stanford or SIB.[12] The complaints here are cases-in-point. Willis and BMB are insurance brokers that dealt with Stanford at arm's-length to help SIB procure ordinary commercial insurance policies unrelated to the CDs and SEI provided a Stanford affiliate with computer technology services. Petitioners did not buy, sell, broker, profit from, or otherwise trade in the SIB CDs. Nor have they been accused of wrongdoing by the SEC, DOJ, or the Stanford Receiver. Even Respondents do not contend that Petitioners had any knowledge at all that Stanford was running a Ponzi scheme.

This Court has consistently refused to extend private liability under the federal securities laws to third-party actors such as Petitioners. As the Court explained, "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets." *Central Bank*, 511 U.S. at 188. Securities fraud litigation "requires secondary actors to expend large sums even for pretrial defense and the negotiation of

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[12] An empirical study of securities class actions found that "[p]roviding for a wide range of potential defendants . . will increase the expected return from litigation and induce more class action lawsuits," and that "[d]eep-pocket defendants such as underwriters and auditors hold the greatest promise of increasing the return for plaintiffs' attorneys." Stephen J. Choi, *The Evidence on Securities Class Actions*, 57 Vand. L. Rev. 1465, 1512 (2004); *see also* Cornerstone Research, *Accounting Class Action Filings and Settlements* 14 (2012) (finding that median case settlement amounts increased by more than 300% when an auditor was named as a defendant), *available at* http://tinyurl.com/boxja7o.

settlements." *Id.* at 189. This "uncertainty and excessive litigation" causes "ripple effects" that fall the hardest on "newer and smaller companies" and professional services firms that may be the targets of third-party securities fraud claims. *Id.*[13]

In *Stoneridge*, for example, the plaintiffs brought a federal securities fraud claim against Motorola and Scientific-Atlanta under the implied private right of action this Court has recognized under § 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. The premise of that claim was that Motorola and Scientific-Atlanta engaged in transactions that allowed *another* company (Charter Communications) to issue misleading financial statements and commit securities fraud. 552 U.S. at 153-54. This Court squarely rejected that attempt to reach third parties, emphasizing that it was unwilling to expose a "new class of defendants" to the "uncertainty and disruption" that inevitably results from lawsuits alleging "weak claims to extort settlements from innocent companies." *Stoneridge*, 552 U.S. at 163-66.

Similarly, in *Janus Capital Group v. First Derivative Traders*, 131 S. Ct. 2296, 2301-05 (2011), the Court held that the phrase "make any untrue statement" in Rule 10b-5 does not extend to a company that provides information that is

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[13] *See also Regents of Univ. of Cal. v. Credit Suisse First Boston*, 482 F.3d 372, 386 (5th Cir. 2007) ("In *Central Bank*, the Court emphasized that securities fraud liability is an area of the law that demands certainty and predictability. Secondary liability brings neither; instead, it gives rise to confusion about the extent of secondary actors' obligations and invites vague and conflicting standards of proof in diverse courts.").

subsequently published by *another* company in a mutual fund prospectus. In reaching that conclusion, the Court emphasized that the contrary rule "would create the broad liability that we rejected in *Stoneridge*." *Id.* at 2304.

Those concerns about the importance of protecting third parties from expansive private securities liability are squarely implicated here. Any federal securities action against Petitioners would clearly run afoul of *Central Bank* and *Stoneridge*. These decisions stand as insuperable obstacles to a federal securities action, and the actions here were avowed, calculated efforts to avoid those decisions. As in *Dabit*, it would make no sense whatsoever for these especially disfavored federal claims to somehow escape SLUSA preclusion. A Rule 10b-5 defect should not be construed as a SLUSA virtue, yet that is precisely what the Fifth Circuit's decision—and its inquiry into whether misrepresentations about covered securities are "tangential"—allows.

When a named defendant is far removed from the actual fraud that caused the plaintiff's loss, the plaintiff must often allege additional facts in order to implicate that third-party actor. Because the Fifth Circuit envisions an ill-defined inquiry into whether the misrepresentation "in connection with" covered securities is central or tangential to the overall allegations in the complaint, there is a real risk, if not a likelihood, that the additional allegations necessary to bring the third party into the case will render the misrepresentation tangential, especially for purposes of the third party's liability. The Fifth Circuit's decision is thus likely to reward plaintiffs

who bring claims that are the *least* meritorious in the eyes of federal law—namely, claims targeting deep-pocketed third-party defendants with only some attenuated connection to the underlying fraud.

That result makes no sense. The prohibition on private claims against aiders and abettors is part of the scheme of sensible federal securities regulation that Congress wanted to protect from circumvention by enacting SLUSA. A rule of construction that treats those claims as more likely to escape SLUSA preclusion contravenes that purpose and cannot be squared with this Court's holding in *Dabit*. In that case, the Court rejected the plaintiffs' argument that they were too far removed from a covered securities transaction for SLUSA to apply because they were merely "holders" of securities, rather than purchasers or sellers. There is no reason why claims *against* tangential defendants should fare better than claims *by* tangential plaintiffs.[14]

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[14] In addition to the tension with *Stoneridge* and *Central Bank*, Respondents' claims against Willis and BMB also run afoul of *Morrison v. National Australia Bank*, 130 S. Ct. 2869 (2010), because they seek extraterritorial application of U.S. securities laws. The Willis Respondents are Mexican and Venezuelan citizens who purchased CDs from an Antiguan bank. These are precisely the type of "foreign-cubed" claims that do not belong in U.S. court absent express statutory language authorizing such claims. *Cf. Kiobel v. Royal Dutch Petroleum*, -- S. Ct. --, 2013 WL 1628935 (Apr. 17, 2013).

B. Respondents Should Not Be Allowed To Evade SLUSA and the PSLRA Through Artful Pleading.

The express purpose of SLUSA was to prevent plaintiffs from using artful pleading to evade the heightened barriers on private securities fraud litigation that Congress enacted in the PSLRA. Yet Respondents' counsel has boasted of using such pleading tactics here: Respondents brought only "claims under state law" in order to "get around the U.S. Supreme Court's rulings in" *Central Bank* and *Stoneridge*. *See* Triedman, *supra* n.1.

As this Court explained in *Dabit*, a "narrow reading" of SLUSA would "run contrary to SLUSA's stated purpose, viz., 'to prevent certain State private securities class action lawsuits . . . from being used to frustrate the objectives' of the [PSLRA]." 547 U.S. at 86 (quoting § 2(5), 112 Stat. at 3227). In particular, the PSLRA "prompted at least some members of the plaintiffs' bar to avoid the federal forum altogether," and SLUSA was intended to "stem this 'shif[t] from Federal to State courts.'" *Id.* at 82; *see also* S. Rep. No. 105-182, at 8 (1998) ("[I]t remains the Committee's intent that the bill be interpreted broadly to reach mass actions and all other procedural devices that might be used to circumvent the class action definition."). The Willis Respondents' counsel has accordingly conceded that "[o]bviously the application of SLUSA will be case dispositive for basically all the class actions, all the investor actions. If SLUSA applies, they'll basically be dismissed." Transcript at 7, *In re Stanford Securities Litig.*, No. 3:09-cv-1274 (N.D. Tex. Apr. 20, 2011).

In light of Congress' intent to combat efforts to evade federal reforms through artful pleading, it would frustrate Congress' purposes to give "in connection with" anything but its full, broad sweep. Congress had witnessed firsthand the ability of enterprising lawyers to evade its efforts to rein in private securities class actions by diverting claims to state court. And Congress likewise understood that plaintiffs would remain "masters of their complaints" and so could plead around SLUSA if its preclusion provision was not written broadly. Given Congress' evident intent to avoid the circumvention of the PSLRA, it would make no sense to artificially narrow the broad language of SLUSA to reward artful pleading. *Cf. Standard Fire Ins. Co. v. Knowles*, 133 S. Ct. 1345, 1350 (2013) (refusing to allow plaintiff to use a non-binding stipulation to evade the federal Class Action Fairness Act).

This case is a prime example of the gamesmanship Congress sought to prevent when it enacted SLUSA. If brought under federal law, Respondents' claims against Willis, BMB, and SEI would have been subject to the PSLRA's requirements (such as heightened pleading standards), as well as the limits on private claims against third parties set forth by this Court in *Stoneridge* and *Central Bank*. Respondents thus limited their complaints to Texas and Louisiana state-law claims. There is no need to speculate about their motivation for doing so. The Willis Respondents' counsel boasted to the press that he limited the complaint to "claims under state law" in order to "get around the U.S. Supreme Court's rulings in [*Central Bank*] and [*Stoneridge*], which

have been the death knell to federal securities law claims against third party advisors to accused fraudsters." Triedman, *supra* n.1.

There is no reason to think that Congress wanted to reward such artful pleading. Even without the benefit of the legislative context, the specific words Congress chose in SLUSA are broad and encompassing. But once SLUSA is recognized as an anti-circumvention provision, the case for interpreting its broad language to avoid easy circumvention through the artful wording of state-law complaints becomes overwhelming. It is easy enough to pad a complaint with allegations that make a single misrepresentation about covered securities seem "tangential." But it is not easy to attempt to hold relatively tangential defendants like Petitioners liable for the consequences of a massive Ponzi scheme without mentioning a representation about covered securities.

Congress, fresh from the experience of seeing the PSLRA circumnavigated, wisely wrote a broad preclusion provision in which a single misrepresentation "in connection with" a covered security sufficed. The Fifth Circuit's decision refusing to give those terms their plain, broad meaning should not be allowed to stand.

CONCLUSION

The judgment of the court of appeals should be reversed.

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May 3, 2013

STATUTORY APPENDIX

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15 U.S.C. § 78bb

Effect on Existing Law

(a) Limitation on judgments

(1) In general

No person permitted to maintain a suit for damages under the provisions of this chapter shall recover, through satisfaction of judgment in 1 or more actions, a total amount in excess of the actual damages to that person on account of the act complained of. Except as otherwise specifically provided in this chapter, nothing in this chapter shall affect the jurisdiction of the securities commission (or any agency or officer performing like functions) of any State over any security or any person insofar as it does not conflict with the provisions of this chapter or the rules and regulations under this chapter.

(2) Rule of construction

Except as provided in subsection (f), the rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(3) State bucket shop laws

No State law which prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities, shall invalidate—

(A) any put, call, straddle, option, privilege, or other security subject to this chapter (except any security that has a pari-mutuel payout or otherwise is determined by the Commission, acting by rule, regulation, or order, to be

appropriately subject to such laws), or apply to any activity which is incidental or related to the offer, purchase, sale, exercise, settlement, or closeout of any such security;

(B) any security-based swap between eligible contract participants; or

(C) any security-based swap effected on a national securities exchange registered pursuant to section 78f(b) of this title.

(4) Other State provisions

No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security-based swap or a security futures product, except that this paragraph may not be construed as limiting any State antifraud law of general applicability. A security-based swap may not be regulated as an insurance contract under any provision of State law.

(b) Modification of disciplinary procedures

Nothing in this chapter shall be construed to modify existing law with regard to the binding effect (1) on any member of or participant in any self-regulatory organization of any action taken by the authorities of such organization to settle disputes between its members or participants, (2) on any municipal securities dealer or municipal securities broker of any action taken pursuant to a procedure established by the Municipal Securities Rulemaking Board to settle disputes between municipal securities dealers and municipal securities brokers, or (3) of any action described in paragraph (1) or (2) on any person who has agreed to be bound thereby.

(c) Continuing validity of disciplinary sanctions

The stay, setting aside, or modification pursuant to section 78s(e) of this title of any disciplinary sanction imposed by a self-regulatory organization on a member thereof, person associated with a member, or participant therein, shall not affect the validity or force of any action taken as a result of such sanction by the self-regulatory organization prior to such stay, setting aside, or modification: *Provided*, That such action is not inconsistent with the provisions of this chapter or the rules or regulations thereunder. The rights of any person acting in good faith which arise out of any such action shall not be affected in any way by such stay, setting aside, or modification.

(d) Physical location of facilities of registered clearing agencies or registered transfer agents not to subject changes in beneficial or record ownership of securities to State or local taxes

No State or political subdivision thereof shall impose any tax on any change in beneficial or record ownership of securities effected through the facilities of a registered clearing agency or registered transfer agent or any nominee thereof or custodian therefor or upon the delivery or transfer of securities to or through or receipt from such agency or agent or any nominee thereof or custodian therefor, unless such change in beneficial or record ownership or such transfer or delivery or receipt would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or

custodian therefor were not physically located in the taxing State or political subdivision. No State or political subdivision thereof shall impose any tax on securities which are deposited in or retained by a registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor, unless such securities would otherwise be taxable by such State or political subdivision if the facilities of such registered clearing agency, registered transfer agent, or any nominee thereof or custodian therefor were not physically located in the taxing State or political subdivision.

(e) Exchange, broker, and dealer commissions; brokerage and research services

(1) No person using the mails, or any means or instrumentality of interstate commerce, in the exercise of investment discretion with respect to an account shall be deemed to have acted unlawfully or to have breached a fiduciary duty under State or Federal law unless expressly provided to the contrary by a law enacted by the Congress or any State subsequent to June 4, 1975, solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for effecting a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services provided by such member, broker, or dealer, viewed in terms of either that particular transaction or his overall responsibilities

with respect to the accounts as to which he exercises investment discretion. This subsection is exclusive and plenary insofar as conduct is covered by the foregoing, unless otherwise expressly provided by contract: *Provided, however*, That nothing in this subsection shall be construed to impair or limit the power of the Commission under any other provision of this chapter or otherwise.

(2) A person exercising investment discretion with respect to an account shall make such disclosure of his policies and practices with respect to commissions that will be paid for effecting securities transactions, at such times and in such manner, as the appropriate regulatory agency, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(3) For purposes of this subsection a person provides brokerage and research services insofar as he—

(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;

(B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or

(C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the

Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.

(4) The provisions of this subsection shall not apply with regard to securities that are security futures products.

(f) Limitations on remedies

(1) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or

(B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(2) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in paragraph (1), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to paragraph (1).

(3) Preservation of certain actions

(A) Actions under State law of State of incorporation

(i) Actions preserved

Notwithstanding paragraph (1) or (2), a

covered class action described in clause (ii) of this subparagraph that is based upon the statutory or common law of the State in which the issuer is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(ii) Permissible actions

A covered class action is described in this clause if it involves—

(I) the purchase or sale of securities by the issuer or an affiliate of the issuer exclusively from or to holders of equity securities of the issuer; or

(II) any recommendation, position, or other communication with respect to the sale of securities of an issuer that—

(aa) is made by or on behalf of the issuer or an affiliate of the issuer to holders of equity securities of the issuer; and

(bb) concerns decisions of such equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters' or appraisal rights.

(B) State actions

(i) In general

Notwithstanding any other provision of this subsection, nothing in this subsection may be construed to preclude a State or political

subdivision thereof or a State pension plan from bringing an action involving a covered security on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or State pension plans that are named plaintiffs, and that have authorized participation, in such action.

(ii) State pension plan defined

For purposes of this subparagraph, the term "State pension plan" means a pension plan established and maintained for its employees by the government of a State or political subdivision thereof, or by any agency or instrumentality thereof.

(C) Actions under contractual agreements between issuers and indenture trustees

Notwithstanding paragraph (1) or (2), a covered class action that seeks to enforce a contractual agreement between an issuer and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(D) Remand of removed actions

In an action that has been removed from a State court pursuant to paragraph (2), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(4) Preservation of State jurisdiction

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

(5) Definitions

For purposes of this subsection, the following definitions shall apply:

(A) Affiliate of the issuer

The term "affiliate of the issuer" means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

(B) Covered class action

The term "covered class action" means—

(i) any single lawsuit in which—

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class

predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(C) Exception for derivative actions

Notwithstanding subparagraph (B), the term "covered class action" does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.

(D) Counting of certain class members

For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(E) Covered security

The term "covered security" means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933 [15 U.S.C. 77r(b)], at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred,

except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 [15 U.S.C. 77a et seq.] pursuant to rules issued by the Commission under section 4(2) of that Act [15 U.S.C. 77d(2)].

(F) Rule of construction

Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

RESPONDENT'S BRIEF

Supreme Court, U.S.
FILED
JUL 18 2013
OFFICE OF THE CLERK

Nos. 12-79, 12-86 and 12-88

In the Supreme Court of the United States

CHADBOURNE & PARKE LLP,

Petitioner,

v.

SAMUEL TROICE, *et al.*,

Respondents.

WILLIS OF COLORADO INCORPORATED,
BOWEN, MICLETTE & BRITT, INC., AND
SEI INVESTMENTS COMPANY,

Petitioners,

v.

SAMUEL TROICE, *et al.*,

Respondents.

PROSKAUER ROSE LLP,

Petitioner,

v.

SAMUEL TROICE, *et al.*,

Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

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BRIEF FOR THE RESPONDENTS

Respondents Samuel Troice et al. respectfully request that this Court affirm the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

STATEMENT OF THE CASE

Respondents allege that petitioners participated in or facilitated a fraudulent scheme to sell certificates of deposit (CDs) in violation of state law. Reversing the district court, the court of appeals held that the complaints are not precluded by the Securities Litigation Uniform Standards Act of 1998 (SLUSA), Pub. L. No. 105-353, 112 Stat. 3227 (1998). The court recognized that the CDs are not "covered securities" subject to the statute. Although the CD sales potentially involved misstatements "about" covered securities, those representations were made only "in connection with the purchase or sale of" the non-covered CDs, not any "covered security."

1. Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 adopted by the Securities and Exchange Commission (SEC) are the principal securities fraud provisions of federal law. Both apply to fraud, including a "material" omission or misrepresentation, "in connection with the purchase or sale of any security." 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. A misrepresentation is "material" if a reasonable investor would regard it as important in making investment decisions. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). A material misrepresentation is made "in connection with the

purchase or sale of" the security if it "coincides" with that transaction. *United States v. O'Hagan*, 521 U.S. 642, 656 (1997). The term "security" is defined broadly to include a wide array of financial instruments, including certain certificates of deposit. *See* 15 U.S.C. §§ 77b(a)(1), 78c(a)(10).

The SEC may enforce Rule 10b-5 civilly, and the Department of Justice may bring felony prosecutions for willful violations. 15 U.S.C. § 78ff(a); 17 C.F.R. § 240.10b-5. Private purchasers and sellers have an implied right of action to sue for violations of Rule 10b-5. *Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 13 n.9 (1971). But Congress subjected such suits to a variety of substantial restrictions in the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737 (1995).

When some plaintiffs sought to avoid those limits by filing their federal securities claims as state-law suits instead, Congress responded by enacting SLUSA. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 82 (2006). SLUSA generally provides for the removal and dismissal of a state-law complaint brought by fifty or more plaintiffs "alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). (Citations to Section 78bb(f) are to SLUSA's amendment to the 1934 Securities Exchange Act; SLUSA adopted parallel amendments to the Securities Act of 1933 as well.) The terms "material" and "in connection with" in SLUSA have the same meaning as under Section 10(b) and Rule 10b-5. *Dabit*, 547 U.S. at 85-86.

The term "covered security" is limited to only a subset of "securities": those traded on a U.S. national exchange, such as the New York Stock Exchange, NASDAQ, or a similar exchange, 15 U.S.C. § 77r(b)(1), 17 C.F.R. § 230.146(b), or issued by a federally registered investment company, 15 U.S.C. § 77r(b)(2). Congress concluded that these "nationally traded securities" required special and distinct protections from state-law suits because issuers were unable to control the jurisdictions in which they were traded. The purpose of the statute is thus "to make Federal court the exclusive venue for most securities fraud class action litigation *involving nationally traded securities*." H.R. Rep. No. 105-803, at 15 (1998) (Conf. Rep.) (emphasis added). In order to preserve state regulatory authority over fraud involving other securities that were not traded on national markets, Congress imported the phrase "covered security" from the National Securities Markets Improvement Act of 1996, Pub. L. 104-290, 110 Stat. 3416 (1996), where its role is to divide regulatory authority between the federal and state governments so that the federal government takes responsibility for "national offerings of securities," while states and individuals "retain authority . . . to bring actions pursuant to State laws and regulations prohibiting fraud and deceit." H.R. Rep. No. 104-622, at 16, 34 (1996).

2. This case arises from the infamous Ponzi scheme of Allen Stanford. The outlines of the fraud are well known and not disputed. Stanford controlled the Stanford International Bank (SIB), located in Antigua. SIB sold approximately $7 billion in certificates of deposit to more than 25,000 people over fifteen years. The CDs were debt instruments, redeemable by the

purchasers. They guaranteed a fixed rate of interest, not connected to the performance of SIB's portfolio.

Implementing a classic Ponzi scheme, SIB actually covered interest payments and redemptions using part of the proceeds from new CD sales. Meanwhile, Stanford wasted the remainder of the investors' money on personal luxuries and unprofitable investments. To shore up the scheme, Stanford and his colleagues manipulated their financial statements and lied to regulators about their financial condition and performance.

When the fraud was eventually discovered and collapsed, the effect was devastating. Thousands of individuals – including a great many retirees and small business owners – lost their entire life savings. *See, e.g.*, *SEC v. Stanford Int'l Bank, Ltd.*, 424 Fed. Appx. 338, 340 (5th Cir. 2011) (considering request for relief of "a retired, widowed school teacher" who "invested her entire retirement, approximately $550,000" in SIB CDs that "are now virtually worthless").

Eventually, the government brought a successful civil suit against Stanford and others under Rule 10b-5, as well as a criminal prosecution for willful violations of Section 10(b). Jurisdiction was premised on the fact that the CDs "offered and sold by the Defendants are 'securities' under" the Securities Act, Exchange Act, Investment Company Act, and Advisers Act. First Amended Complaint, *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-298, at ¶ 8 (N.D. Tex. Feb. 27, 2009); *SEC v. Stanford Int'l Bank, Ltd.*, No. 3:09-cv-298, at 10 (N.D. Tex. Order Nov. 30, 2011) (holding that the SIB

CDs were "securities under the federal securities laws").

Private purchasers of the CDs sought to recover their losses as well. As is relevant here, three groups of purchasers brought four private civil suits under state law. The cases were consolidated on appeal and in this Court. The thrust of all the complaints is that the various defendants misled the plaintiffs into purchasing the CDs or otherwise facilitated the fraudulent sales of the CDs.

Two groups of Louisiana residents filed two complaints (*Roland v. Green* and *Farr v. Green*) under Louisiana law in Louisiana state court. *See* J.A. 232-306 (hereinafter "Roland Compl."), 317-399 (hereinafter "Farr Compl."). Both named as defendants entities and individuals who had been involved in selling the CDs: SEI Investments Company, the Stanford Trust Co., the Trust's employees, and the Trust's investment advisors. The complaints allege that the defendants misrepresented the CDs as a "safe investment vehicle" with "little or no risk" that would produce "consistent, double-digit returns." J.A. 246 (Roland Compl. ¶ 12), 337 (Farr Compl. ¶ 14). They also misrepresented SIB as "competent and proficient" and overseen by both the Antiguan government and independent auditors. *Id.* Specifically with regard to petitioner SEI, the complaints alleged that SEI marketed the SIB CDs with knowledge that they were unregistered, knowingly permitted its name to be used in connection with the marketing of the SIB CDs, recommended the SIB CDs and maintained investments in them without conducting proper diligence, and failed to disclose material information about the risk of the SIB CDs in

reports that it issued to the plaintiffs. *Id.* 275-80 (Roland Compl. ¶¶ 100-13), 368-73 (Farr Compl. ¶¶ 104-17).

Other purchasers of the CDs filed two separate complaints under Texas law in the District Court for the Northern District of Texas, which oversees the federal Stanford-related litigation under the Multidistrict Litigation statute. One (*Troice v. Willis*) named as defendants SIB's insurance brokers. *See* J.A. 612-735 (hereinafter "Willis Compl."). The complaint alleges that the defendants played a central role in the fraud by misrepresenting the CDs as, for example, "insured by Lloyd's," "regulated by the United States government," and subject to "regular stringent Risk Management Review" by outside auditors. *Id.* 629, 650 (Willis Compl. ¶¶ 36, 77). According to the complaint, Stanford employees drafted insurance endorsement letters that the Willis petitioners placed on their own letterhead "with the clear intention that said letters be used by Stanford Financial for marketing purposes to retain or obtain actual and prospective clients for SIB." *Id.* 636 (Willis Compl. ¶ 51). The close working relationship between the insurers and Stanford meant that "perhaps no other third party had as much knowledge of Stanford Financial's worldwide operations as BMB and Willis." *Id.* (Willis Compl. ¶ 50). Indeed, according to the complaint, the insurers knew that Stanford was engaged in a massive fraud, but rather than disclose it, they aided it by drafting marketing letters falsely representing that the SIB CDs were safe. *Id.* 659 (Willis Compl. ¶ 94).

In their second complaint (*Troice v. Proskauer*), the plaintiffs named as defendants two of SIB's law firms.

See J.A. 422-493 (hereinafter "Proskauer Compl."). The complaint does not allege any misrepresentations by the firms, which are instead alleged to have knowingly facilitated the fraud by assisting SIB in evading regulatory oversight. *Id.* 476-491 (Proskauer Compl. ¶¶ 97-116) Principally, Tom Sjoblom – a partner initially at Proskauer & Rose LLP and then at Chadbourne & Parke LLP – lied to regulators and suborned perjury by SIB officers. *E.g.*, *id.* 455, 468 (Proskauer Compl. ¶¶ 60, 83).

Invoking SLUSA, the defendants removed the *Green* cases from Louisiana state court to federal district court. The Judicial Panel on Multidistrict Litigation then transferred the cases to the Northern District of Texas. Pet. App. 8a. (Citations to Pet. App. are to the Petition Appendix in No. 12-79.) The defendants filed motions to dismiss all four complaints under SLUSA. *Id.* They urged the district court to adopt an expansive interpretation of the phrase "in connection with" and hold that SLUSA barred the complaints even though the SIB CDs were not covered securities and did not convey any interest in covered securities, and despite the fact that SIB's representations did not affect the market for covered securities. The plaintiffs argued that the complaints should not be dismissed under the settled meaning of that phrase in the context of actions under Section 10(b) and Rule 10b-5, where it is the basis for asserting federal court jurisdiction.

The district court granted the motions. *Id.* 47a-73a. Preliminarily, the district court recognized that although the CDs are "securities," they are *not* "covered securities," because they are not traded on a national

exchange. *Id.* 61a. Fraud in the sale of the CDs thus would not itself trigger SLUSA.

The district court nonetheless held that the statute justified dismissing the complaints on two theories. First, the court found it to be a proper "inference" that one factor which led the plaintiffs to purchase the CDs was SIB's representation that "the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities." *Id.* 64a-65a & n.11. Second, the court concluded that the complaints "imply" that to purchase a CD "at least one of the Plaintiffs" liquidated an individual retirement account, which "commonly" include "SLUSA-covered securities." *Id.* 68a-69a.

A panel of the Fifth Circuit unanimously reversed. The court decided to resolve the case by announcing a general legal standard to govern all cases in which "the fraud alleged was centered around the purchase or sale of an uncovered security, like the CDs at issue in this appeal." *Id.* 20a. After surveying the precedent of this Court and other courts of appeals, the Fifth Circuit adopted the Ninth Circuit's holding that "fraud is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide *or* are more than tangentially related." *Id.* 32a (emphasis added) (quoting *Madden v. Cowen & Co.*, 576 F.3d 957, 966 (9th Cir. 2009) (internal quotation marks omitted)).

SIB did not make its misrepresentations contemporaneously with (or in the course of) the same transaction as its separate supposed purchase of "liquid assets"; the two thus did not "coincide." The Fifth

Circuit further concluded that SIB's representation *about* those liquid assets did not transform the case into one precluded by SLUSA. SIB's statement about its asset portfolio was "but one of a host of (mis)representations made to the Appellants in an attempt to lure them into buying the worthless CDs." *Id.* 35a-36a. "[T]he heart, crux, and gravamen of their allegedly fraudulent scheme was representing to the Appellants that the CDs were a 'safe and secure' investment that was preferable to other investments for many reasons." *Id.* 36a; *see supra* at 5-7 (discussing allegations of the complaints). The court accordingly concluded that "the purchase or sale of securities (or representations about the purchase or sale of securities) is only tangentially related to the fraudulent scheme alleged by [respondents]." Pet. App. 33a.

The court of appeals further reasoned that its

> conclusion that the allegations do not amount to being "in connection with" transactions in covered securities is bolstered by the distinction between the present cases and the so-called "feeder fund" cases arising from the Madoff Ponzi scheme. The SIB CDs, in contrast to the funds in which many individuals invested with Madoff, were not mere "ghost entities" or "cursory pass-through vehicles" to invest in covered securities. The CDs were debt assets that promised a fixed rate of return not tied to the success of any of SIB's purported investments.

Id. 37a (internal citations omitted).

The Fifth Circuit finally rejected the district court's holding that SLUSA precludes the complaints because at least one plaintiff presumably sold covered securities to generate funds to buy a CD. This is not a case, the court explained, in which "the fraud depended upon the tortfeasor convincing the victims of those fraudulent schemes to sell their covered securities in order for the fraud to be accomplished." *Id.* 39a. Thus, any such sale of covered securities by a plaintiff "was not more than tangentially related to the fraudulent scheme and accordingly, provides no basis for SLUSA preclusion." *Id.* 40a.

SUMMARY OF THE ARGUMENT

The complaints in this case are not precluded by SLUSA because they do not allege "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). The plaintiffs instead allege fraud in connection with the sale of the SIB certificates of deposit, which were not covered securities and which did not convey any interest in any covered security. They further allege that the scheme included misrepresentations that were unrelated to covered securities, such as that the CDs were insured and that SIB was closely regulated and audited.

Petitioners assert that the complaints nonetheless contain three allegations that trigger SLUSA. Each theory would require a radical expansion of not only SLUSA, but also Section 10(b) and Rule 10b-5, both of which use the identical standard to establish federal jurisdiction for actions initiated by private plaintiffs and the government.

First, one petitioner argues that SLUSA applies because the fraud led at least one plaintiff to sell covered securities to generate capital to buy the CDs. But the securities laws do not apply when the sale of securities was an incidental consequence – as opposed to the design or objective – of the scheme. Otherwise, the federal securities laws would apply to fraud in the defendant's sale of any asset, such as a house or a car, whenever the purchaser liquidates securities to finance the transaction.

Second, petitioners assert that SIB's claim that it owned "liquid assets" triggers SLUSA. Even accepting petitioners' speculation that "liquid assets" means "covered securities," SIB's misrepresentation was not about any "purchase or sale." The securities laws apply only to misrepresentations that "coincide" with securities transactions, not misstatements "about" securities ownership. On petitioners' reading, every false statement about securities ownership – whether in a credit application, a job interview, or anywhere else – potentially constitutes securities fraud. Congress did not intend to undo the established allocation of federal and state regulatory authority in that fashion.

Third, petitioners maintain that SLUSA applies to SIB's supposed promise to use proceeds from the plaintiffs' CD purchases to buy additional liquid assets. In fact, SIB made no such promise. In any event, there is no support for that reading of the statute: petitioners and the government identify no cases concluding that such a misrepresentation is subject to the federal securities laws.

That is no surprise. The securities laws do not apply to the sale of a non-covered asset when the seller misrepresents its intent to buy covered securities in which no other party will hold any interest. Such a misstatement is not "material" to any covered securities transaction because it does not affect either the behavior of any investor in covered securities or the national market for covered securities. It is not "in connection with" the purchase of covered securities because the misstatement is made at the time of the earlier sale of the non-covered asset; it does not coincide with the later purchase of the covered security.

Nor does such a misrepresentation implicate the interests underlying the federal securities laws: protecting the integrity of and public confidence in the regulated securities market. As the United States has admitted, the Stanford Ponzi scheme "had no prospect of affecting the market in [covered] securities." U.S. Cert. Br. 12. Presumably, whenever SIB actually bought covered securities, it did so honestly on the open market. SIB's statement that it would buy additional liquid assets did not introduce any dishonesty or unfairness into any trade in covered securities. Nor did it otherwise erroneously induce any seller to make or avoid such a transaction.

Petitioners' argument would undermine other important policies underlying the securities laws. Congress enacted SLUSA to limit abusive securities litigation with only a tangential relationship to actual securities fraud. But petitioners' rule would achieve the opposite result: their broad interpretation of "in connection with" would expand federal jurisdiction under Rule 10b-5, permitting private purchasers and

the SEC to bring suit for garden-variety common-law frauds with any tangential relationship to any security. And any willful misstatement would be subject to prosecution as a federal felony. Under the rule of lenity, the courts will find such an expansion of federal criminal jurisdiction only upon a plain statement of congressional intent that SLUSA does not contain.

Congress also crafted SLUSA to respect the states' regulatory authority by limiting the statute to fraud in connection with transactions in "covered securities" traded on national markets. Congress chose that language to preserve state-law remedies relating to non-covered assets like the SIB CDs. Petitioners' expansive reading of the federal securities laws would, however, displace those remedies, raising substantial federalism concerns.

For those reasons, petitioners' argument is undermined, not supported, by this Court's precedent holding that secondary liability is not available in a private suit under Rule 10b-5. The Court reasoned that state rather than federal law should determine liability in cases not directly involving securities fraud. Yet petitioners' theory would extinguish state group remedies in many cases that have never been regarded as subject to the federal securities laws. Moreover, this Court concluded that it was appropriate to limit the scope of liability under Rule 10b-5. But petitioners' argument substantially expands federal securities liability by significantly broadening the meaning of the phrase "in connection with."

Congress also wanted SLUSA to be easily administrable at the outset of the litigation. But a

ruling in petitioners' favor could not be evenly or efficiently applied in later cases. It would be impossible for the lower courts to know, for example, whether the defendant's asset pool included a sufficient proportion of covered securities to trigger SLUSA preclusion. Nor is there any reason to open the door to the new array of securities claims that petitioners would invite.

Finally, the Court should not defer to the SEC's argument in its *amicus* brief that the securities laws apply to any material misstatement "about" securities transactions. That interpretation conflicts directly with this Court's precedents: frequently, a statement "about" a transaction will not "coincide" with the transaction, as in "we bought this house in 1984" or "SIB previously purchased a pool of liquid assets." The *amicus* brief represents an unexplained, dramatic change in the position of the agency, which apparently had not advocated this interpretation since the adoption of the 1934 Act.

The reason for the agency's change in position seems obvious: aggrandizement. The broader this Court's interpretation of "in connection with," the greater the SEC's authority to bring civil actions under Rule 10b-5 and the Justice Department's power to bring felony securities fraud prosecutions. The agency's *amicus* brief is not entitled to deference under this Court's precedent, but if it were, that precedent should be overruled.

ARGUMENT

Petitioners' briefs make it easy to confuse what this case is about, and what it is not about. It is not about the proper interpretation of any term unique to the Securities Litigation Uniform Standards Act. It is instead about the construction of language common to both SLUSA and the provisions that confer jurisdiction over federal securities fraud claims – Section 10(b) of the Securities Exchange Act and Rule 10b-5. The phrase on which petitioners rest their argument – "in connection with the purchase or sale" – is the doorway through which private parties and the government must pass in initiating any federal securities fraud action. That is the avowed reason the United States has filed an *amicus* brief supporting petitioners. Petitioners' plea to stretch that doorway so significantly that every material claim "about" regulated securities passes through it would warp the securities laws and set them against the very thrust of this Court's modern jurisprudence seeking to limit federal securities litigation.

The Fifth Circuit's judgment should be affirmed because the federal securities laws – including SLUSA – do not apply to a defendant's sale of a non-covered asset (here, the CDs) through a false claim of ownership or claim of intent to buy covered securities in which no other person will hold an interest. Such a misrepresentation is not made "in connection with" any transaction in covered securities, because the statement and the transaction are separate events and thus do not coincide. *See United States v. O'Hagan*, 521 U.S. 642, 656 (1997). Nor is the misstatement "material" to such a transaction, because it does not

affect investor behavior in the covered securities markets. *See Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

This Court can decide this case and provide substantial guidance to the lower courts without broadly articulating a general rule to govern every case in which representations about covered securities lead to the sale of a non-covered product. It need only address cases in which the defrauded party – here, the purchasers of the CDs – acquired no interest in the covered securities.

In an appropriate later case, this Court can consider whether SLUSA applies when the defrauded party instead holds some interest in the defendant's supposed portfolio of covered securities. In such a case, SLUSA may apply because the victim arguably purchases a share of the covered securities themselves, such that the fraud is "in connection with" a transaction in covered securities. That is the issue in the cases that petitioners cite involving so-called "feeder fund" investments in the Bernard Madoff Ponzi scheme. *E.g.*, *In re Kingate Mgmt. Ltd. Litig.*, No. 09-cv-5386, 2011 WL 1362106, at *8-*9 (S.D.N.Y. Mar. 30, 2011) (holding that SLUSA applied to investments in funds that "were essentially cursory pass-through vehicles by which investors could place their assets with Madoff, and the Funds placed the entirety of their assets with Madoff, making no independent investments whatsoever," all the while believing that they were actually "invest[ing] in the United States and in United States equities that are part of the S&P 100"). But that issue is not presented here.

To the extent this Court nonetheless follows the course of the Fifth Circuit and resolves this case on broader grounds, respondents endorse the court of appeals' holding that "fraud is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide *or* are more than tangentially related." Pet. App. 32a (emphasis added) (citation and quotation marks omitted). Petitioners err in caricaturing the Fifth Circuit as holding "SLUSA inapplicable based on *other* alleged misrepresentations that did not relate to SLUSA-covered securities." Willis Br. 5 (emphasis in original) (citing nothing). In fact, if a complaint alleges a scheme involving unfairness or dishonesty in the market for covered securities, SLUSA applies because the fraud and the transactions "coincide," and it makes no difference whether the defendant also made other misrepresentations. But petitioners seek to extend SLUSA to fraud involving and affecting only transactions in *non*-covered securities. The court of appeals correctly held that in such a case, SIB's claim that it owned or would purchase liquid assets is at best only tangentially related to the purchase or sale of covered securities and therefore does not trigger SLUSA. Pet. App. 37a.

I. Under Well-Settled Law, The Complaints Do Not Allege Any Material Misrepresentation In Connection With The Purchase Or Sale Of A Covered Security.

Respondents allege that petitioners participated in or aided a fraudulent Ponzi scheme to sell the SIB CDs. It is uncontested that the fraudulent sale of the SIB CDs does not itself trigger SLUSA because the CDs

were not "covered securities." Instead, the CDs were simple, non-recourse debt instruments. *E.g.*, Pet. App. 37a. The interest rate was both fixed and guaranteed, not tied to the performance of SIB's portfolio of assets (including any covered securities). *Id.* And SIB's portfolio did not "back" the CDs – at least not in the meaningful sense that its assets were security for the plaintiffs' investment or determined the returns on that investment. *Contra* Chadbourne Br. 28. As discussed, the CDs conveyed no interest in SIB's assets. Put simply, then, misrepresentations about the CDs cannot be "in connection with the purchase or sale of a covered security," because the CDs are not covered securities, and do not convey any interest in covered securities.

The complaints' principal allegations of fraud similarly do not implicate SLUSA because they have nothing to do with covered securities. The defendants' scheme sought to mislead the plaintiffs into believing that the non-covered CDs were a safe and secure investment. Indeed, many of the petitioners – such as petitioner SEI and the law firm petitioners – are not alleged to have made any misrepresentations related to covered securities at all. Instead, the complaints allege misrepresentations about the CDs themselves.

For example, contrary to the erroneous, self-serving representation of the Willis petitioners that they are alleged to have "merely placed ordinary commercial insurance policies for SIB from Lloyd's of London," Br. 11, the complaints allege that the Willis petitioners knew of the fraud yet falsely stated that the CDs were insured – even allowing Stanford to distribute those representations on Willis's letterhead. *E.g.*, J.A. 637,

650 (Willis Compl. ¶¶ 52, 77). SIB and the law firm petitioners also falsely claimed that purchasers were protected from fraud because SIB was both heavily regulated and also regularly audited by a respected firm. *E.g.*, J.A. 485 (Proskauer Compl. ¶ 109). Petitioner SEI likewise marketed and facilitated investments in the unregistered and unlawful CDs. *E.g.*, J.A. 275-80 (Roland Compl. ¶¶ 100-13).

Without more, SLUSA does not apply. To the contrary, this is precisely the kind of case for which Congress preserved state-law claims by limiting SLUSA to fraud in connection with transactions in "covered securities." For the reasons that follow, petitioners' claims that the complaints nonetheless allege "a" single material misrepresentation in connection with the purchase or sale of a covered security lack merit.

II. SLUSA Is Not Triggered By The Plaintiffs' Supposed Sale Of Covered Securities To Purchase The CDs.

Petitioner Proskauer Rose alone argues (Br. 37-38) that SLUSA bars the complaints because the fraud led to a transaction in covered securities – not by SIB, but by one of the plaintiffs. Proskauer endorses the district court's theory that SLUSA applies because "at least one of the Plaintiffs acquired SIB CDs with the proceeds of selling SLUSA-covered securities." Pet. App. 69a. The principal importance of this theory is that it demonstrates the implausible implications of petitioners' attempt to give the securities laws their broadest possible construction.

Proskauer's argument fails because SIB's misrepresentations about the CDs were not "in connection with" those sales of other securities. To be sure, the securities laws do apply to a scheme in which the victim is induced to sell securities and then deprived of the proceeds. *See Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 10 (1971). But here, the complaints merely allege that SIB instructed its agents to "push" the CDs. J.A. 440-41. They do not allege – and there is no evidence – that the scheme's design or objective was to steal the plaintiffs' covered securities or to convert the plaintiffs' covered securities into worthless non-covered CDs, or that SIB's agents were instructed to (or in fact did) encourage the plaintiffs only to sell their covered securities. By all accounts, SIB did not care where the plaintiffs got the money to buy the CDs – whether from using cash on hand, taking out a loan, selling real property, liquidating securities, or some other source.

Imagine the radical consequences of Proskauer's contrary theory that an incidental sale of covered securities by one of the victims is made "in connection with" the fraudulent sale of SIB CDs. The same logic would apply to schemes to fraudulently sell *any* item – *e.g.*, a house, timeshare, car, or boat – that happens to be purchased even in part with the proceeds from liquidation of securities. Proskauer's theory would apply so long as *one* member of a large group of plaintiffs sold a share of stock to finance the purchase. SLUSA would immunize the defendants from traditional state-law group remedies. Meanwhile, the victims could bring individual securities fraud suits against the seller of the property in federal court under Rule 10b-5.

In addition, the government could bring its own securities fraud actions under the Rule. If the fraud were willful, the government could prosecute the seller for a felony. Indeed, the government's power to bring those actions is broader than SLUSA's limitation because Section 10(b) and Rule 10b-5 apply to misrepresentations in connection with transactions in "*any* security," not merely "covered" securities. The "in connection with" requirement is thus the principal check on the government's ability to threaten liability, a check which would be undermined by Proskauer's sweeping reading.

III. SLUSA Is Not Triggered By SIB's False Claim That It Owned An Existing Portfolio Of Liquid Assets.

Petitioners next argue that SLUSA applies to the complaints' allegation that SIB falsely claimed to own "liquid assets." That argument lacks merit for several reasons.

A. Preliminarily, petitioners dramatically overstate this allegation. Plaintiffs do not allege that SIB represented that its portfolio of "liquid assets" was composed exclusively – or even substantially – of "covered securities" traded on a U.S. national exchange. Petitioners' contrary assertion is speculation. *Accord* U.S. Cert. Br. 21 (recognizing that the status of the liquid assets as covered securities is an assumption or inference). SIB explained that its liquid assets constituted "a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." J.A. 444 (Proskauer

Compl. ¶ 41). SIB was an offshore bank in Antigua with access to massive global markets. So no plaintiff could have understood that his or her individual purchase would necessarily lead SIB to buy securities traded on a U.S. exchange. *Cf. Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2885-86 (2010) (holding that the securities laws do not apply extraterritorially, and acknowledging that other countries have robust securities markets with elaborate regulatory schemes of their own).

B. Even a false representation by SIB that it owned "covered securities" would not trigger SLUSA. Petitioners' assertion that "misrepresentations about covered securities are clearly sufficient to satisfy the 'in connection with' requirement and trigger SLUSA," Willis Br. 34 (emphasis omitted) (citing nothing), thumbs its nose at the plain statutory text. A false claim to *own* covered securities is not made "in connection with" the "*purchase or sale of*" those assets. The federal securities laws – including SLUSA – by their terms do not apply to misstatements about the ownership of securities in which the defrauded party has no interest; they apply only to misrepresentations in connection with the "purchase or sale" of regulated securities. The statutes thus protect the integrity of trading in securities markets. That limitation must be respected, not overridden. If petitioners' reading were correct – *i.e.*, if every claim to "own" securities could be reconceived as a claim to have previously purchased those securities – Congress would have written the statutes to apply to misrepresentations "in connection with covered securities."

Even on petitioners' contrary view that every statement "about" securities purchases is *ipso facto* made "in connection with" those purchases, *e.g.*, Chadbourne Br. 24, the complaints do not allege that SIB misrepresented its "purchase" of its existing portfolio. For example, SIB did not misstate the manner or timing of how it acquired those assets. Petitioners presumably want this Court to *infer* that allegation. That is impermissible; by its terms, SLUSA looks to the complaint's actual allegations. But here the inference is also implausible: SIB never made the representation that petitioners attribute to it. SIB did not discuss when or how its portfolio was acquired.

C. In any event, SLUSA would not apply even if SIB had expressly made a false claim specifically about its purchase of a portfolio of covered securities, because there is no merit to petitioners' proposed legal rule. The securities laws are not triggered by every false statement "about" a securities transaction. In SLUSA, Congress "imported" decisions that had construed the identical phrase – "in connection with a purchase or sale" – under Section 10(b) of the 1934 Exchange Act and Rule 10b-5. *Dabit*, 547 U.S. at 86. Under that settled body of law, a misstatement occurs "in connection with" the "purchase or sale" of securities only if it "coincides" with that transaction – and not if it merely describes the transaction. *O'Hagan*, 521 U.S. at 656.

Thus, in *O'Hagan*, the Court concluded that a lawyer violated Section 10(b) by using confidential information from his firm to gain an advantage in securities trades. The scheme was "in connection with the purchase or sale" of the securities because it

"coincided" with the trades: the misappropriation was complete only once the information was misused through trading. 521 U.S. at 656 ("[T]he fiduciary's fraud is consummated, not when the fiduciary gains the confidential information, but when, without disclosure to his principal, he uses the information to purchase or sell securities"). The Court's interpretation of "in connection with" was also informed by the policies underlying the securities laws. In such a case, the misappropriator "deceives the source of the information and simultaneously harms members of the investing public," *id.*, because "investors likely would hesitate to venture their capital in a market where trading based on misappropriated nonpublic information is unchecked by law," *id.* at 658. *See also Dabit*, 547 U.S. at 85, 89 (applying SLUSA to hold that brokerage's attempted "fraudulent manipulation of stock prices" coincided with contemporaneous stock sales, and therefore was in connection with sales, without regard to whether the plaintiffs were themselves purchasers or sellers); *SEC v. Zandford*, 535 U.S. 813, 820 (2002) (applying Rule 10b-5 to hold that broker who had sold client's securities and kept the proceeds for his own benefit had engaged in securities fraud because "[t]he securities sales and respondent's fraudulent practices were not independent events," so that the "fraud coincided with the sales themselves").

In this case, the fraud that induced the plaintiffs' purchases of the CDs did not coincide with SIB's supposed prior "purchase" of its supposed existing pool of liquid assets. At the time the plaintiffs bought the CDs, SIB claimed already to own those assets; by

definition, the prior "purchase or sale" of those assets was already complete.

Put another way, even on petitioners' characterization of SIB's representations, SIB misstated its *prior* securities purchases to establish its *present* creditworthiness. Imagine that SIB sold the CDs through the following false representation: "we can repay you because we bought 1 million shares of IBM six months ago." Or take the analogous purchase of another non-security that would be equally subject to petitioners' rule – a vehicle – based on the misrepresentation that "I can afford to repay this car loan because I own 1000 shares of IBM." The fraudulent sale of the CDs and the purchase of the car of course both "coincide" with the misrepresentation – all such frauds do. But under the securities laws the dispositive point is that neither "coincides" with the prior "purchase" of the IBM shares.

Petitioners' counter-argument is that SIB's misrepresentation about its prior securities purchases was part of a common scheme with its fraudulent sales of the CDs, so the two "coincide." But that is not the connection between fraud and securities transactions that triggers SLUSA. Instead, the defendant's misrepresentation must "coincide" with the transaction in the covered security; there must be a material misrepresentation "in connection with the purchase or sale" of *that* security. Here, SIB was not engaged in any scheme – over however long a period of time – to make misrepresentations in its purchase or sale of "covered securities." So SLUSA does not apply.

The fact that the federal securities laws – including SLUSA – do not apply in a case like this one is no accident or technicality. The statutes are directed at fraud in connection with transactions in regulated securities because their purpose is to preserve public confidence in and the integrity of the regulated securities markets on which those transactions occur. *O'Hagan*, 521 at 658 (explaining that an "animating purpose of the Exchange Act" is "to insure honest securities markets and thereby promote investor confidence"); *Zandford*, 535 U.S. at 819 (same); *see also Morrison*, 130 S. Ct. at 2884 (explaining that Section 10(b) "does not punish [all] deceptive conduct," but instead "seeks to regulate" only certain "purchase-and-sale transactions" in securities, and to "protect" only the "parties or prospective parties to those transactions") (internal quotation marks, citations, and alterations omitted).

By contrast, a misrepresentation like SIB's – that a party owns or previously purchased a portfolio of covered securities – does not, without more, substantially implicate those interests. It does not, for example, introduce any dishonesty into any transaction in any covered security or make it any less likely that any party would buy or sell securities on a U.S. national exchange. SIB's misrepresentations instead implicate ordinary state-law anti-fraud rules.

D. Petitioners' argument also must be rejected because, as discussed in more detail *infra*, it would override the allocation of federal and state regulatory authority traditionally recognized by the securities laws. Garden-variety fraud claims that have historically fallen within the province of the states

would be transformed into federal securities fraud cases. Individuals and businesses constantly make indistinguishable claims that they own assets (including securities) in asserting that they are reliable business partners or that they can repay debts. *See, e.g.*, *In re Oster*, No. 10-12629, 2011 WL 739539, at *1 (E.D. Mich. Feb. 24, 2011) (debtor represented that he owned millions of dollars in "marketable securities" to obtain bank loan).

Other hypotheticals trip off the tongue. Take an individual who applies for a car loan claiming to own assets including shares of Google stock, but overstates the number of shares or their value. Or a party seeks funding to purchase a building, falsely listing among his assets recently purchased shares of Xerox. In the commercial context, imagine that a party issues non-covered debt, stating that it can make interest payments because it owns a variety of revenue-generating or liquid assets, including commercial real estate, an operating business, and shares of Apple Computer, Inc.

Indeed, a ruling in petitioners' favor would extend the securities laws well beyond credit transactions, or indeed transactions of any kind. Parties misstate their stock holdings in diverse contexts. Debtors try to hide assets from creditors. *See In re Geller*, 314 B.R. 800 (Bankr. N.D. 2004) (debtor denied discharge after misrepresenting value of stock). Divorcing spouses conceal assets from each other. *See Macar v. Macar*, 803 So. 2d 707, 709 (Fla. 2001). Criminal defendants misrepresent their assets to courts. *Cf. United States v. Greig*, 2013 U.S. App. LEXIS 9935 (1st Cir. 2013) (bail determination); *United States v. Birrell*, 470 F.2d

113 (2d Cir. 1972) (Friendly, J.) (application to proceed *in forma pauperis*). The lovelorn overstate their wealth to get dates. *Cf.* SOME LIKE IT HOT (Ashton Productions 1957) (in which Tony Curtis impersonates the heir to Shell Oil in an effort to seduce Marilyn Monroe). And so on.

In fact, petitioners' interpretation extends the federal securities laws even further, to a party's statements about the holdings of third parties. For example, credit bureaus have been known to understate individuals' assets. *Cf. Dun & Bradstreet v. Greenmoss Builders*, 472 U.S. 749, 751 (1985). Biographers may misstate the holdings of their subjects. And applicants for jobs at trading firms misstate their experience in buying and selling stocks.

On petitioners' theory, those misstatements, if material to any transaction or interaction, all violate the federal securities laws because they were made "about," and therefore "in connection with," the prior purchase of the covered securities. The government may institute a civil securities fraud action and, if the misstatement was willful, a felony prosecution. Meanwhile, SLUSA bars any state-law class action to remedy the fraud.

Such a radical expansion of federal regulatory authority and parallel diminishment of traditional state police powers raises grave federalism concerns. That reading must be rejected, because "courts should assume that 'the historic police powers of the States' are not superseded 'unless that was the clear and manifest purpose of Congress.'" *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012) (quoting *Rice v.*

Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)). SLUSA obviously does not manifest such a purpose.

IV. SLUSA Does Not Bar A Complaint Alleging That The Defendant Fraudulently Sold A Non-Covered Asset Through A False Promise To Use The Proceeds To Purchase Covered Securities For Itself.

Petitioners finally argue that the complaints allege that SIB falsely promised to use the proceeds from the plaintiffs' CD purchases to acquire covered securities. This is not an appropriate case in which to decide that question. Even if this Court were to accept petitioners' legal theory, SLUSA would not apply to the allegations of these complaints.

Unquestionably, the *Roland* and *Farr* complaints do not allege that SIB represented to those plaintiffs that it would use the proceeds of CD sales to purchase additional assets. Nor could the Court fairly imply such an allegation, which would be only incidental to the plaintiffs' claim of fraud in the sale of the non-covered CDs. So those suits may go forward even if petitioners were to prevail on this theory.

Petitioners' argument instead arises from the two *Troice* complaints. *E.g.*, J.A. 433 (Proskauer Compl. ¶ 24) (alleging misrepresentation that "investments in the CDs were liquid and the CDs could be redeemed at any time because SIB, through Stanford Financial, invested the money in safe, secure and liquid assets"); *id.* 628 (Willis Compl. ¶ 34) (same). Petitioners assert that the *Troice* plaintiffs' allegations are analogous to a claim that SIB falsely "represented that SIB would

invest plaintiffs' money in AAA-rated covered securities, but actually invested them in much riskier covered securities." Chadbourne Br. 31.

That analogy fails for two reasons. First, the hypothetical presumes that the plaintiff would hold an interest in the securities. That is not true of SIB's CDs. *See supra* at 18.

Second, SIB did not promise to use money from any particular plaintiff to buy anything. Instead, SIB represented its general practice. The contract for sale of the CDs is controlling, and it includes no such agreement. Under the securities laws, that is a critical difference. Petitioners' argument also depends on speculation because the "liquid assets" that SIB ostensibly said it would purchase do not equate with "covered securities." *See supra* at 21-22.

In any event, for the reasons that follow, SLUSA would not preclude the complaints even if SIB had promised to purchase additional securities with the proceeds of the plaintiffs' CD purchases.

A. SLUSA "Imports" The Previously Settled Interpretation Of "In Connection With" Under Section 10(b) and Rule 10b-5, Which Have Never Been Construed As Petitioners Propose.

1. Congress would not have regarded a suit like this one as a vexatious form of securities litigation that should be precluded by SLUSA, given that such claims have always been brought under state law, not subject to the federal securities laws. In the eight decades

since the Exchange Act's adoption, no administrative or judicial ruling at any level of the federal system – by the SEC, a district court, a court of appeals, or this Court – has ever extended Section 10(b) or Rule 10b-5 to a case like this one. Petitioners and the government identify no case arising from the fraudulent sale of a non-security based on the defendant's mere representation that it will use the proceeds to purchase a security in which no other party will hold any interest. That includes any case in which the security would increase the value of the fraudulently sold non-security. To the contrary, it previously has been settled that the federal securities laws look to "the product that was marketed to the investor, not what the defendant actually did with the investor's money." *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1352 (11th Cir. 2008). *See also Ring v. Axa Fin., Inc.*, 483 F.3d 95, 100-02 (2d Cir. 2007).

Petitioners note that – as the SEC's civil suit and the criminal prosecution against Stanford demonstrate – SIB's sales of the CDs were subject to Rule 10b-5. That is true, but misleading. It is only true because of the coincidence that the non-covered asset which SIB sold (the CDs) happened also to be a "security" subject to Section 10(b) and Rule 10b-5. *See supra* at 4. It is misleading because petitioners' legal rule applies much more broadly to misrepresentations "about" securities in the course of *any* transaction. The federal securities laws would equally apply to a suit alleging fraud by a borrower (or a purchaser on credit), if the defendant promised to purchase stocks that could be liquidated to pay the debt. *See supra* at 26-28. They also would apply if the defendant falsely promised to sell an existing (or non-existent) stock portfolio to resolve any

obligation. And they would apply if two people enter into a business partnership, in which one promises to finance the venture, misrepresenting his securities holdings in the process to secure more favorable partnership terms.

For example, this Court held unanimously that FDIC-insured certificates of deposit issued by U.S. banks are not "securities" at all. *Marine Bank v. Weaver*, 455 U.S. 551, 559 (1982). In the same case, the Court held that a profit-sharing agreement between two parties, "negotiated one-on-one," was likewise "not a security." *Id.* at 560. But if petitioners prevail, they will create an end-run around *Marine Bank*. Any time an FDIC-insured CD is marketed using representations about securities, or any time the negotiations for a one-on-one agreement involve similar representations, the specter of federal securities liability will loom. Put simply, the federal securities laws would come to overlap not only with all fraud laws, but all contract law, any time any statement about a security is material to a transaction.

The government's statement that "the scheme here differs from the paradigmatic SLUSA-precluded case," U.S. Br. 19, is the closest it can come to a frank acknowledgment that it has never seen such a case dismissed under SLUSA. The government does say that the "lower courts have recognized that the 'in connection with' requirement can be satisfied when a party falsely promises to carry out a securities purchase or sale or falsely claims to have done so." *Id.* 20. But it cites no case in which the defendant falsely promised to purchase the securities for *itself*. In most of the cases it cites, the defrauded party held (or would

have held, but for the fraud) an interest in the regulated securities. *See Instituto de Prevision Militar*, 546 F.3d at 1349 ("[T]he investor could state a claim for fraud under § 10(b) even though securities were never purchased on his behalf. It was sufficient that the manager accepted and deposited [the investor's] monies as payment for securities with no intent to deliver them.") (internal quotation marks and citation omitted); *In re Herald, Primeo, & Thema Sec. Litig.*, No. 09-289, 2011 WL 5928952, at *8 (S.D.N.Y. Nov. 29, 2011) ("Madoff's announced intention to purchase covered securities (*i.e.*, stocks and options) for the benefit of Funds in which Plaintiffs invested satisfies the requirement that Plaintiffs' claims against JPM and BNY, Madoff's bankers, were made 'in connection with the purchase or sale of a covered security.'") (quoting SLUSA); *Barron v. Igolnikov*, No. 09-4471, 2010 WL 882890, at *4-*5 (S.D.N.Y. Mar. 10, 2010). In the others, the defendant was a trader who falsely claimed to have executed trades for others. *See In re Orlando Joseph Jett*, Admin. Pro. File No. 3-8919, 2004 WL 2809317, at *22 (Mar. 5, 2004); *In re Richard J. Line*, Admin. Pro. File No. 3-9134, 1996 WL 582948, at *2 (Sept. 30, 1996).

The few cases that petitioners cite (Willis Br. 38-40) are easily distinguished as well. In some, the plaintiffs lost money when funds ostensibly invested for their benefit were misappropriated. *See Grippo v. Perazzo*, 357 F.3d 1218, 1220-21 (11th Cir. 2004); *Horattas v. Citigroup Fin. Markets Inc.*, 532 F. Supp. 2d 891, 893 (W.D. Mich. 2007) (holding that SLUSA applied to allegation that the manager of an endowment breached fiduciary duty by liquidating covered securities in favor of imprudent investments, thereby

harming plaintiff beneficiaries); *Scala v. Citicorp*, No. 10-3859, 2011 WL 900297, at *1 (N.D. Cal. Mar. 15, 2011) (alleging a "'Madoff-style' Ponzi scheme" in which the perpetrator held "himself out as an investment consultant who would invest money on client's behalves"). In others, the defendant's misrepresentations manipulated the market for covered securities. *See U.S. Mortgage, Inc. v. Saxton*, 494 F.3d 833, 845 (9th Cir. 2007) (holding that SLUSA applied when publicly traded company made material misstatements in financial statements in an effort to manipulate its stock price). And the remainder (Willis Br. 40 & n.10) refer to the Madoff "feeder fund" cases, distinguished *supra* at 16. None of these cases are remotely similar to this one – *i.e.*, a case involving only transactions in non-covered securities that do not convey any interest in covered securities, and in which the defendants' fraud does not implicate public confidence in or the integrity of the market for covered securities.

2. Petitioners' inability to cite a single case on point is no surprise. The securities laws do not apply to a party's sale of a non-covered asset through a false statement of an intention later to buy a covered security for itself. The misrepresentation is neither made "in connection with" nor "material" to the purchase or sale of the covered security.

a. Such a misrepresentation does not "coincide" with the purchase of a covered security. The fraud – the sale of the non-covered product – is complete before any later purchase or non-purchase of a covered security. Here, plaintiffs allege that SIB committed fraud in the sale of the CDs. That fraud was complete

immediately, and certainly well before SIB would have gone on to invest the proceeds. The transactions were thus distinct. By contrast, in *O'Hagan*, the Court found it critical that the defendant's fraudulent misappropriation was not complete until he used the information to purchase securities. *See supra* at 24.

It is not enough that the fraud and the later purchase of covered securities could be characterized as part of a common scheme. In *O'Hagan*, the Court rejected a very similar argument. The Court agreed with the SEC that Section 10(b) would not apply to a scheme to embezzle funds to purchase stocks. "[M]oney can buy, if not anything, then at least many things; its misappropriation may thus be viewed as sufficiently detached from a subsequent securities transaction that § 10(b)'s 'in connection with' requirement would not be met." 521 U.S. at 656-57. The Court found it significant that such a scheme would not implicate the statute's purpose "'to insure the maintenance of fair and honest markets.'" *Id.* at 657 (quoting 15 U.S.C. § 78b). That precise logic applies here. Like the embezzlement hypothesized in *O'Hagan*, SIB's fraud was in misappropriating the plaintiffs' funds by selling worthless CDs. SIB could have used other funds – including its own cash on hand – to purchase additional liquid assets.

In *O'Hagan*, Justice Thomas forewarned that parties in later cases – like petitioners and the SEC here – would try to evade any sensible limits on the application of the securities laws. The result, he warned, would be "inconsistent and incoherent interpretation of the relevant statutory language." 521 U.S. at 692 (Thomas, J., concurring in part and

dissenting in part). The significant further extension of the federal securities laws now proposed by petitioners "is no better than an ad hoc interpretation of statutory language [that] can provide no basis for liability." *Id.* Petitioners' attempt in this case to eliminate those sensible limits should be rejected.

Petitioners' contrary argument that because SLUSA contains the word "connection," it reaches frauds with even highly attenuated relationships to covered securities transactions (Proskauer Br. 22-23) has numerous flaws. The securities laws actually use the phrase "in connection with," which is distinct (indeed an entirely different part of speech) from the word "connection." This Court's settled precedents interpret that phrase to require that the fraud and the transaction "coincide." And in any event, the word connection has the strained reading that petitioners embrace only in the hyper-literal sense that "'really, universally, relations stop nowhere,'" which this Court has repeatedly rejected. *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655-56 (1995) (quoting HENRY JAMES, RODERICK HUDSON xli (New York ed., World's Classics 1980)). This Court has refused to read such a phrase with "uncritical literalism," because otherwise "for all practical purposes pre-emption would never run its course." *Dan's City Used Cars, Inc. v. Pelkey*, 133 S. Ct. 1769, 1778 (2013) (citing *N.Y. State Conference*, 514 U.S. at 655). *See also, e.g., Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001).

b. Petitioners' argument also cannot be squared with SLUSA's requirement that there be a "misstatement" that is "material" to the purchase or

sale of the covered security. In *Basic Inc. v. Levinson*, the Court held that a statement is "material" if it would be "significant to the trading decision of a reasonable investor." 485 U.S. 224, 235 (1998). That will be true when there is a "substantial likelihood" that it would "significantly alter[] the 'total mix' of information made available." *Id.* at 231-32.

The only transactions in covered securities implicated by petitioners' theory were SIB's purchases for itself. Petitioners are reduced to arguing that "[h]ere, that 'someone' [who purchased covered securities] was SIB." Willis Br. 38. But petitioners never offer a theory of how a statement like SIB's could be material to its own purchase or sale of a covered security. SIB knew when it intended to buy securities, and (more often) when it did not. It was not misled at all, much less materially. By analogy, a plaintiff who purchases securities based on a representation that it *knows* to be false would obviously have no claim for securities fraud. So too for SIB.

SIB thus did buy some liquid assets, just vastly fewer than it represented. *See, e.g.*, J.A. 594 (Walther Aff. ¶ 9) (stating that as of December 2008, cash and equivalents represented nine percent of SIB's portfolio, and investments with money managers, including some liquid assets, represented approximately ten percent). But there is no allegation that those transactions involved material misstatements by any party, nor any allegation that the transactions were conducted in anything but an honest and open manner. SIB presumably paid the market price, without any unfair advantage over its counterparties or others in the market, and there is no allegation to the contrary.

Nor did SIB's false statement of an intention to buy additional securities have any other material effect on the national securities markets. As the United States explained at the certiorari stage, in an exceptionally important point that it omits without explanation from its brief on the merits: "the investors to whom the misrepresentations were made never purchased any covered securities themselves, and the fraud had *no prospect* of affecting the market in such securities." U.S. Cert. Br. 12 (emphasis added).

Petitioners' contrary argument is that the complaints allege that SIB's false statement of intent to buy more covered securities was material to sale of the non-covered CDs. *E.g.*, Willis Br. 11 (arguing that the misrepresentations "were a material part of Stanford's scheme" to sell CDs); *see also* Chadbourne Br. 37. But the securities laws ask whether the misstatement was "material" to the purchase or sale of the regulated security, *i.e.*, whether it would be "viewed by the reasonable investor as having significantly altered the 'total mix' of information available" regarding *that* security. *E.g.*, *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1318 (2011) (holding that information relating to adverse effects from a pharmaceutical company's products is "material") (quoting *Basic*, 485 U.S. at 231-32). For SLUSA's purposes, the misrepresentation must be material to the transaction in the *covered* security.

SLUSA thus is not triggered by the fact that the fraud had a material effect on the party's purchase of some other, non-covered asset. On petitioners' contrary view, the securities laws apply to misstatements that have *immaterial* consequences for securities

transactions, if they materially affect anything else. That would stretch Section 10(b) and Rule 10b-5 to protect participants in the market for non-covered assets, and would extend SLUSA to transactions that Congress expressly excluded from its ambit. Petitioners' attempt to expand the securities laws makes no sense, and the statutes have never been construed in that fashion.

c. Petitioners argue to the contrary that their position is supported by decisions holding that the federal securities laws apply even when the defrauded party or the plaintiff in the case was not a party to any securities transaction. *E.g.*, Willis Br. 38. That argument is a straw man. Respondents do not argue that SLUSA is inapplicable because no plaintiff traded in covered securities. Rather, SIB's misstatement did not coincide with, and was not material to, the "purchase or sale of a covered security" by *any* person – whether or not a party to this case. *Dabit*, 547 U.S. at 85.

The three cases cited by petitioners are thus unhelpful to their argument. In *Dabit*, the Court held that SLUSA applied to the claims of plaintiffs who "owned and continued to own" securities – so-called "holders." *Id.* at 76. In contrast to this case, it was uncontested (and dispositive) that the defendant's misrepresentations materially affected transactions in covered securities by other parties: the complaint alleged that Merrill Lynch "used its misinformed brokers to enhance the prices of its investment banking clients' stocks" causing "clients and brokers both [to] continue[] to hold their stocks long beyond the point when, had the truth been known, they would have

sold"; moreover, "when the truth was actually revealed . . . the stocks' prices plummeted." *Id.* at 75. The Court held that this misconduct – "fraudulent manipulation of stock prices – unquestionably qualifies as fraud 'in connection with the purchase or sale of securities.'" *Id.* at 89. The misrepresentation was accordingly subject to Rule 10b-5. The Court held that the plaintiffs' status as "holders" of covered securities was not relevant under SLUSA; it affected only their standing to sue under the Rule. *Id.*

In *O'Hagan*, the defendant defrauded his law firm, which did not engage in securities trades. *See* 521 U.S. at 647. But the Court specifically found that the misappropriation coincided with the defendant's securities trades; the fraud was not "consummated" until those transactions occurred. *See id.* at 656; *see also supra* at 24. Furthermore, because the defendant's possession of confidential information gave him an unfair advantage, it was uncontested that the fraud was material to trading in the market. *See* U.S. Br., *O'Hagan*, at 4 n.1.

And in *Zandford*, the defendant misappropriated his clients' stocks by trading them and converting them to his own use. 535 U.S. at 815-16. Again, the link to trading was obvious: the defendant effectively stole the clients' shares and then sold them. Such a scheme "represents an even greater threat to investor confidence in the securities industry" because it "undermines the value of a discretionary account," a principal mechanism by which retail investors participate in the market. *Id.* at 822.

B. Petitioners' Reading Would Undermine SLUSA's Central Purposes.

Petitioners err in their constant refrain that the Fifth Circuit's judgment should be reversed because the phrase "in connection with" should be given a "broad" construction to reach "complex frauds." *E.g.*, Proskauer Br. 24; Chadbourne Br. 25-26. "Broad" is not a rule of decision. If it were, then every fraud with any relationship to covered securities would be immune from state-law group actions under SLUSA and subject to claims for securities fraud under Rule 10b-5. It would reach, for example, Proskauer's astounding theory – which the other petitioners seemingly hope goes unnoticed – that a single plaintiff's incidental sale of securities to purchase an asset triggers the securities laws. But that is not the law. Every statute has its limits, and petitioners' argument exceeds SLUSA's.

This Court has repeatedly explained that the phrase "in connection with" "must not be construed so broadly as to convert every common law fraud that happens to involve securities into a violation of § 10(b)." *Zandford*, 535 U.S. at 820. *See also The Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588, 596 (2001) (holding that Section 10(b) should not be read to "permit numerous plaintiffs to bring federal securities claims that are in reality no more than ordinary state breach-of-contract claims"); *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 472 (1997) (holding that "to bring within the ambit of the Rule all breaches of fiduciary duty in connection with a securities transaction" would "'add a gloss to the operative language of the statute quite different from its commonly accepted meaning'") (citation omitted); *Chiarella v. United States*, 445 U.S.

222, 232 (1980) ("[N]ot every instance of financial unfairness constitutes fraudulent activity under § 10(b).").

Instead, the language must be construed flexibly in order to "*effectuate its remedial purposes*," *Zandford*, 535 U.S. at 819 (emphasis added) (citation and quotation marks omitted), and address "the particular concerns that culminated in SLUSA's enactment," *Dabit*, 547 U.S. at 86. As just explained, SIB's misstatements do not implicate the securities laws' *raison d'être*: to protect the integrity of and public confidence in the federally regulated market for covered securities. For three further reasons, petitioners' interpretation would not fulfill the purpose of the securities laws, including SLUSA; it would affirmatively undermine them.

1. Congress sought to limit vexatious litigation alleging tenuous claims of securities fraud "involving *nationally traded* securities" – *i.e.*, covered securities. *Id.* at 81 (emphasis added). SLUSA thus embodies "the congressional preference for national standards for securities class action lawsuits involving nationally traded securities." *Id.* at 87.

The Fifth Circuit's ruling fulfills Congress's purpose. Because it conforms to the settled understanding of the phrase "in connection with," *see supra* at 30-31, it applies SLUSA to cases involving frauds in connection with "nationally traded securities" that are subject to Rule 10b-5 and in turn to the restrictions imposed by the PSLRA. Petitioners' interpretation does not; there is no precedent for recognizing an allegation of this type involving fraud in

connection with non-securities assets as a basis for jurisdiction under Rule 10b-5.

Indeed, petitioners' theory would undermine Congress's goal of limiting securities fraud litigation. The phrase "in connection with" is a double-edged sword: reading it broadly does limit state-law group actions under SLUSA, but it also expands the right of private civil litigants and the government to bring securities fraud suits under Rule 10b-5. The same phrase appears in both provisions; in Rule 10b-5 it is the basis for recognizing federal jurisdiction. *See supra* at 15. That is why the government supports petitioners.

If petitioners prevail, the number of federal securities lawsuits will rise as plaintiffs invoke federal remedies and the discovery provided by the federal rules of civil procedure in numerous cases that previously were regarded as ordinary state-law fraud claims. In turn, the Department of Justice would have broader jurisdiction to bring federal criminal prosecutions. *See* 15 U.S.C. § 78ff(a) (specifying criminal penalties for willful violations of Section 10(b) and Rule 10b-5). As Justice Scalia explained in parallel circumstances in *O'Hagan*, the securities laws do not contain the clear statement of congressional intent required by the "principle of lenity" to expand federal criminal liability in that fashion. 521 U.S. at 679 (Scalia, J., concurring in part and dissenting in part).

2. Petitioners' interpretation also undermines Congress's decision in SLUSA to preserve – not to override or displace – the states' historical role in

providing civil remedies for fraud. The statutory history demonstrates that Congress recognized "the importance of maintaining the vital role of state law in regulating *non*-national securities." Pet. App. 28a (emphasis added). Congress preserved "the appropriate enforcement powers for state regulators, and the right of individuals to bring suit." S. Rep. No. 105-182, at 8 (1998). What Congress left to state law is just as important as what it precluded under federal law.

Thus, while Congress used Section 10(b) as the model for SLUSA's scope, it made a significant change. Section 10(b) broadly applies to fraud in connection with "any" security, but SLUSA applies only to a "covered" security. The purpose of the change was to preserve state regulatory authority and, as the Fifth Circuit explained, Congress's concerns in enacting SLUSA "are unique to the world of national securities." Pet. App. 27a. Specifically addressing the subset of securities that are traded on national exchanges, Congress concluded that issuers "can not control where their securities are traded," with the consequence that "a single state can impose the risks and costs of its peculiar litigation system on all national issuers. The *solution to this problem* is to make Federal court the exclusive venue for most securities fraud class action litigation *involving nationally traded securities*." H.R. Rep. No. 105-803, at 15 (1998) (Conf. Rep.) (emphasis added). Petitioners cite and quote this Court's decision in *Dabit* and the Conference Report on SLUSA dozens of times, but always skip the essential discussion of Congress's exclusive focus on nationally traded securities.

Congress specifically took the phrase and definition of "covered security" from the National Securities Markets Improvement Act, Pub. L. No. 104-290, 110 Stat. 3416 (1996), in which their function is to allocate regulatory authority between federal and state law. *See* H.R. Rep. No. 105-803, at 13. That statute, enacted the year after the PSLRA, amended the securities laws to provide that the federal government would regulate "covered securities" without disturbing the states' regulation of other securities. The purpose of the distinction was to "eliminate the costs and burdens of duplicative and unnecessary regulation" of covered securities. H.R. Rep. No. 104-622, at 16 (1996). But critically, it was not Congress's intention "to alter, limit, expand, or otherwise affect in any way any State statutory or common law with respect to fraud or deceit . . . in connection with securities or securities transactions." *Id.* at 34.

Under this allocation of responsibility, "State governments generally retain[ed] authority to regulate small, regional, or intrastate securities offerings, and to bring actions pursuant to State laws and regulations prohibiting fraud and deceit, including broker-dealer sales practices abuses." *Id.* *See also* H.R. Rep. No. 104-864, at 40 (1996) (Conf. Rep.) ("Smaller, regional, and intrastate securities offerings remain subject to state regulation. The Managers have preserved the authority of the states to protect investors through application of state antifraud laws."). And in enacting SLUSA, Congress determined to "preserv[e] the appropriate enforcement powers of State securities regulators and not chang[e] the current treatment of individual lawsuits." Pub. L. No. 105-353, § 2.

Petitioners' interpretation of SLUSA would override Congress's judgment not to interfere with state remedies for frauds relating to non-covered assets. A ruling in petitioners' favor would preclude important remedies and leave consumers largely unprotected from frauds that Congress determined not to address in the federal securities laws. As discussed, petitioners' theory extends SLUSA to numerous misstatements that have never before been recognized as a basis for a claim of securities fraud under Rule 10b-5. On the other hand, fraud and aiding-and-abetting claims similar to those set forth in respondents' complaints have long been recognized and adjudicated under state law. *See, e.g.*, *Kinzbach Tool Co. v. Corbett-Wallace Corp.*, 160 S.W.2d 509, 514 (Tex. 1942) (Texas common law cause of action for participation in another's breach of fiduciary duty); *Flowers v. Dempsey-Tegeler & Co.*, 472 S.W.2d 112, 114 (Tex. 1971) (statutory liability under Texas Securities Act); *Waterman v. Alta Verde Indus., Inc.*, 643 F. Supp. 797, 808 (E.D.N.C. 1986) (state-law liability for aiding and abetting the sale of unregistered securities); *Adamson v. Lang*, 389 P.2d 39, 42 (Or. 1964) (state-law liability for aiding and abetting fraud against shareholders).

This case thus stands in stark contrast to *Dabit*, in which this Court held that SLUSA reached claims brought by "holders" of securities in part because those claims were traditionally regulated by federal, not state, law. 547 U.S. at 88. Here, the opposite is true: these suits are traditional, long-recognized state-law actions.

To be sure, petitioners' theory would not foreclose every remedy for every plaintiff. Indeed, it would enable a broader array of claims under Rule 10b-5 and therefore increase the amount of litigation in the federal courts. But federal securities law claims are subject to a variety of restrictions under the PSLRA. And the SEC manifestly does not have the resources to bring enough actions to substitute for the deterrent effect of the prospect of state-law class actions.

Further, the consequences for the states' rights and the remedies of victims would be significant. State law, unlike Rule 10b-5, generally recognizes secondary liability. *See, e.g.*, 12A JOSEPH C. LONG, BLUE SKY LAW § 12:6 (chart explaining that some form of secondary liability "appears to be available in all states"). The ruling petitioners seek would override the judgment of sovereign states – in the exercise of their historic police powers – that holding parties like petitioners liable is important to deterring fraud and protecting consumers. It would effectively eliminate the state-law remedy by barring a procedural mechanism – group and class actions – that reflect the states' judgment that collective actions are an important procedural tool. The only parties who could afford to proceed individually are massive institutional investors; the retirees and small business owners who stand to lose everything and who most need protection from fraud would lose out.

So petitioners cry crocodile tears in asserting that their interpretation of SLUSA is necessary to target complicated and sophisticated frauds. *E.g.*, Proskauer Br. 23-24. Their goal is immunity for the secondary actors often involved in those frauds. Under the Fifth

Circuit's decision, if fraud actually occurs in connection with transactions in covered securities, the statute obviously applies. If it involves the purchase or sale of any form of "security" – whether covered or not – the SEC has jurisdiction to bring an action under Rule 10b-5. The only upshot of petitioners' sweeping position is to eliminate significant and longstanding remedies provided by the states in cases traditionally not subject to the federal securities laws.

These cases are a perfect example. Many of the plaintiffs lost everything, and individually they do not have anything approaching the massive resources required to litigate a Rule 10b-5 action against sophisticated defendants whose legal fees are often insured. Petitioners are alleged to have participated in and aided SIB's fraudulent sales of the non-covered CDs, yet because most are secondary actors, if they were to prevail here they would largely avoid their duty to compensate the victims. Petitioners would not be held responsible, notwithstanding the fraudulent representation that the non-covered CDs were a safe investment because SIB was heavily regulated. The petitioner insurance brokers would evade liability under state law for their representations that the CDs were insured. The law firm petitioners also would likely evade liability by forcing each plaintiff to litigate his or her claim individually.

For related reasons, petitioners and some *amici* err in contending that this Court must adopt their position to effectuate the principle that the federal securities laws do not impose secondary liability in private suits under Rule 10b-5. A ruling in petitioners' favor would extinguish group remedies under state law in

numerous cases that are not subject to the Rule, overriding the states' sovereign prerogative to recognize secondary liability under their police powers. It is settled that "[s]tate law claims may at times provide for broader liability than federal law provides, such as aiding and abetting liability in cases of fraud." SECURITIES & EXCHANGE COMMISSION, STUDY ON INVESTMENT ADVISERS AND BROKER-DEALERS 46 (Jan. 2011), http://sec.gov/news/studies/2011/913studyfinal.pdf (citing Cal. Corp. Code § 25403(b) (extending liability to any "person that knowingly provides substantial assistance to another person in violation of any provision of this division or any rule or order thereunder.")). In turn, this Court found it appropriate not to recognize secondary liability under the securities laws in part because this area is "already governed by functioning and effective state-law guarantees," while recognizing that the federal securities laws "do[] not reach all commercial transactions that are fraudulent and affect the price of a security in some attenuated way." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 161-62 (2008).

Further, a decision of this Court adopting petitioners' sweeping interpretation of "in connection with" would expand rather than contract the scope of liability under Rule 10b-5. More cases, not fewer, would be filed as federal securities fraud claims. But this Court limited secondary liability to reduce the "risk that the federal power would be used to invite litigation beyond the immediate sphere of securities

litigation and in areas already governed by functioning and effective state-law guarantees." *Id.*

3. Finally, petitioners' interpretation would undermine Congress's determination that SLUSA would be easily administered at the outset of the case, permitting the trial court to determine promptly whether it was subject to removal and dismissal. A ruling in petitioners' favor would be unadministrable. In a misguided attempt to eliminate this one case, petitioners would have this Court lay a field of land mines that the state and federal courts would inevitably trigger for decades to come. Petitioners offer no legal standard at all, other than the implausibly "broad" rule that the securities laws apply to every statement "about" securities transactions. Petitioners variously suggest that it is relevant that they believe that SIB's statements about covered securities were "central" or "critical" to the fraud and that the complaints state that the fraud was "material" to the purchase of the non-covered CDs. *E.g.*, Chadbourne Br. 41, Proskauer Br. 35, Willis Br. 34-35. But they also

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Petitioners' claim that "[r]espondents' counsel has boasted that he intentionally pled only state-law claims in order to 'get around' the PSLRA and federal-law limitations on suing defendants only remotely connected to the primary wrongdoer," Willis Br. 4, is an extraordinary and irresponsible misrepresentation because it falsely impugns another member of the bar as personally attempting to evade federal law. That statement was *not* made by – and was *not* attributed to – respondents' counsel: it was exclusively an (erroneous) characterization by the author of the daily online entry that petitioners cite. *See* Julie Triedman, *Fifth Circuit Green-Lights $7 Billion Claims Against Proskauer, Other Stanford Advisers*, AmLaw Daily (Mar. 20, 2012).

disavow those factors as "irrelevant." *E.g.*, Chadbourne Br. 18; Proskauer Br. 30; Willis Br. 35.

Imagine how lower courts would apply a ruling in petitioners' favor. One need only observe that both the district court and the government support dismissal of these complaints only through a series of inferences and assumptions. *See supra* at 8, 21. Among other things, it is not at all clear to what extent SIB's misrepresentations involved "covered securities," as SIB only referenced "liquid assets." In a later case, would SLUSA apply to a fraud involving a portfolio of assets including seventy-five-percent covered securities? Twenty-five percent? One percent? Similarly, if petitioners prevail, how should the lower courts address the many cases in which a party is alleged to have falsely represented that it has a "growing" asset base? Is that sufficiently close to infer representations about covered securities that trigger SLUSA? As the Fifth Circuit explained, "every bank and almost every company owns some covered securities in its portfolio, and every debt instrument issued by these banks and companies is backed by this portfolio in the same way the CDs were ultimately backed by the assets in SIB's portfolio." Pet. App. 29a.

None of that massive potential expansion of the securities laws and resulting indeterminacy would serve any useful purpose. As discussed, the government and petitioners have failed to identify any other case like this one. This case is easily resolved through a rule that the lower courts can apply without opening the door to innumerable claims under federal law: SLUSA is not triggered merely by a defendant's false representation that it owned or intended to

purchase covered securities in which no other person would have an interest.

C. Petitioners' Argument Cannot Be Reconciled With Several Provisions Of SLUSA.

Several textual features of SLUSA make it very unlikely that Congress intended to preclude state-law group actions merely because the defendant stated that it intended to purchase covered securities. Begin with Congress's decision to limit the statute to a "covered" security rather than "any" security (as under Section 10(b) and Rule 10b-5). If Congress wanted expansively to preclude state-law suits like this one that involve fraud in the sale of non-covered assets, it would not have gone to the trouble of excluding those assets.

If petitioners are right, it also makes no sense that Congress limited SLUSA to the "purchase or sale" of a covered security. If Congress actually targeted suits alleging frauds that have no effect on the *market* for covered securities, it would not have required that the misrepresentation be made in connection with transactions in those securities. It would have written the statute more broadly to apply to any misstatement "relating to" or "about" covered securities.

Petitioners' interpretation also makes a hash of the fact that SLUSA applies when there is "a" single allegation of a covered misrepresentation. Petitioners' theory is that the statute reaches frauds with *no* adverse effect *at all* on the market for covered securities. If that were so, why would Congress even require the nominal hook of "a" misstatement "about"

covered securities? SLUSA makes sense only when read more narrowly to apply to frauds that adversely affect the market for covered securities. In those cases, in which the fraud itself directly implicates the federal interest, it makes perfect sense to say that "a" material misstatement in connection with a securities transaction triggers SLUSA.

Petitioners also make nonsense of SLUSA's reference to complaints "alleging" that single misrepresentation. The text makes sense if limited to frauds that are material to trades in the federally regulated market for covered securities. In such cases, the statute achieves Congress's goal to preclude state-law suits that seek to evade the restrictions of the PSLRA because the plaintiffs *must* allege these misrepresentations in order to state a claim. If the plaintiffs omit or delete them, the complaint fails by its own terms. Thus, if private plaintiffs had brought suit on the facts of prior cases involving SLUSA or Section 10(b), but omitted the allegations of securities-related misrepresentations, there would have been no cases to pursue. *See, e.g.*, *Dabit*, 547 U.S. at 89 (fraudulent conduct occurred for the sole purpose of manipulating stock prices); *Zandford*, 535 U.S. at 822 (holding that victims were "injured as investors through respondent's deceptions, which deprived them of any compensation for the sale of their valuable securities"); *O'Hagan*, 521 U.S. at 647 (fraud was not consummated until attorney used misappropriated information to purchase securities); *Basic*, 485 U.S. at 228 (fraud constituted misleading statements that artificially depressed stock prices, causing harm).

By contrast, on petitioners' reading, SLUSA functions as a pleading game at best or a trap for the unwary at worst. Petitioners turn SLUSA into a form of postmodern literary criticism – certain words in the complaint trigger federal regulation, no matter what the substantive reality. If petitioners prevail, later plaintiffs in similar cases will avoid SLUSA preclusion merely by omitting any allegation of a misstatement relating to covered securities. This case is a perfect example. These complaints could proceed without that allegation because they allege fraud in connection with the purchase or sale of a *non*-covered asset. They further allege that the scheme included numerous misrepresentations that do not relate in any way to covered securities. The fact that the suits could go forward on the identical legal theory absent any allegation about covered securities also demonstrates that these complaints are not an example of the "vexatious" litigation that Congress targeted in SLUSA.

Congress could not have intended SLUSA to function that way. But not because there is a rule against writing a narrow complaint or amending a somewhat broader one: the statute specifically looks to the allegations of the plaintiffs, who are masters of their complaint. Congress enacted SLUSA to target a class of suits, not to change how complaints are worded. But the only effect of petitioners' reading is to extend SLUSA to a class of cases in which the allegations that trigger the statute's preclusive effect may simply be omitted in the first instance or later deleted. That makes no sense.

D. There Is No Basis To Defer To The SEC's Newfound Interpretation Of The Securities Laws.

Petitioners ask this Court to defer to the SEC's argument – set forth in its *amicus* brief – that the securities laws apply to any misstatement "about" securities transactions. *See* U.S. Br. 23. That theory is unquestionably sweeping. For all petitioners' rhetoric that SIB's portfolio supposedly "backed" the CDs (*e.g.*, Willis Br. 20; Proskauer Br. 37) and that SIB's misrepresentations were "central" to the fraud (*e.g.*, Chadbourne Br. 41), neither of those points has any relevance under the SEC's theory.

The SEC's position lacks merit. It obviously conflicts with this Court's precedent, which holds that a misstatement is "in connection with" the purchase or sale of a security only if it "coincides" with that transaction. *See supra* at 23-24. The Court has never held – or even suggested – that a statement merely "about" securities transactions suffices.

Very frequently, a statement "about" a transaction will not "coincide" with it. Take the statements "we bought this house" and "I will buy a boat." Both are "about" the purchase. But whether such a statement "coincides" with the transaction depends entirely on context. The promise "I will buy a boat from you" may well coincide with the transaction. If false, that particular statement would likely be a material misrepresentation in connection with the supposed purchase.

On the other hand, the statement may address a transaction that is, for example, either long over ("we bought this house in 1984") or contemplated in the future ("I will buy a boat from someone once we finally get a beach house"). Or the transaction may be close in time but only tangentially related to the transaction, as in: "Our daughter was born last month, the day after we bought this house." So too for the representation "SIB previously bought a pool of liquid assets." Each statement is "about" a "purchase or sale," but none "coincides" with the transaction at issue.

No deference is warranted to the SEC's contrary view. Congress enacted Section 10(b) almost eighty years ago. The SEC has had enforcement authority ever since. The government undoubtedly has brought thousands of enforcement actions in administrative proceedings and district courts that could have been resolved by the sweeping rule it now proposes. The government's brief canvasses the agency's prior enforcement history, U.S. Br. 21, yet it fails to identify a single case in which it took the position that every statement "about" securities purchases is *ipso facto* "in connection with" those purchases. Instead, the government's brief announces an entirely new and substantially different interpretation of those statutes, without any explanation for the agency's change in position. *See Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996) ("Sudden and unexplained change, or change that does not take account of legitimate reliance on prior interpretation, may be 'arbitrary, capricious [or] an abuse of discretion,'" and unworthy of deference) (internal citations omitted).

The SEC also fails to acknowledge that its own complaint arising from this fraud asserted jurisdiction under Section 10(b) and Rule 10b-5 based only on the CDs' status as "securities." The agency's complaint does not even mention SIB's representations that it owned or would purchase liquid assets as a basis for jurisdiction under the securities laws, as opposed to merely aspects of the fraud. *See supra* at 4.

In *Zandford*, this Court found it significant that the Court's interpretation of the phrase "in connection with" corresponded to the SEC's longstanding position. *See* 535 U.S. at 819. This case presents the opposite scenario, in which the agency's established understanding of the statute affirmatively undermines its position. The SEC has a long-settled interpretation of the securities laws, which it now jettisons without explanation. This Court appropriately has been deeply dubious of such late-breaking, unexplained claims of agency authority. *E.g.*, *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2168-69 (2012) (denying full deference to agency opinion announced for first time in an *amicus* brief).

Moreover, the reason for the agency's significant change in position appears to be simple aggrandizement. The government wants this Court to impose the broadest conceivable interpretation of "in connection with" to expand substantially its own civil and criminal enforcement authority. To the extent the Court reads that language broadly, the government may bring more civil suits under Rule 10b-5 and felony prosecutions under Section 10(b). The government acknowledges that its interest in this case is that "the relevant language in SLUSA was borrowed from, and

should be interpreted consistently with, similar language in Section 10(b)." U.S. Br. 2. "Accordingly, the decision in this case will have significant implications for the administration and enforcement of the federal securities laws by the Department of Justice and the Securities and Exchange Commission." U.S. Divided Arg. Motion 3. In an era of aggressive and expanding agency action, a ruling for petitioners would create the constant prospect that individuals and businesses would face securities fraud claims and prosecutions initiated by the federal government. *Cf. City of Arlington v. FCC*, 133 S. Ct. 1863, 1877-78 (2013) (Roberts, C.J., dissenting); *O'Hagan*, 521 U.S. at 691-92 (Thomas, J., concurring and dissenting).

Put another way, this case is the proverbial one-night stand between the government and these defendants. Imagine that the Question Presented in this case instead arose in a Rule 10b-5 suit by the SEC or a felony securities fraud prosecution by the Department of Justice over similar misrepresentations by the defendant about "covered securities" in the course of obtaining a non-securitized loan. The avowed purpose of the government's brief is to establish its authority to bring such a case. But the defendant would take the position – obviously correct – that its conduct could not be federal securities fraud because it had nothing to do with the purchase or sale of a security.

If the SEC's *amicus* brief nonetheless would qualify for deference, it would be because the agency is interpreting the parallel language of its own Rule 10b-5 under this Court's decision in *Auer v. Robbins*, 519 U.S. 452 (1997). If so, then *Auer* should be overruled. As

Justice Scalia has explained, that decision inappropriately invites agencies to assume the role of both lawmaker and law enforcer. *See Talk Am., Inc. v. Mich. Bell Tel. Co.*, 131 S. Ct. 2254, 2266 (2011) (Scalia, J., concurring). This case is a perfect example. The SEC regularly invokes its power to initiate *and* adjudicate administrative enforcement actions. *See* U.S. Br. 1-2. By imposing a dramatically broader reading of the securities laws, the agency expands both its power to accuse firms and individuals of securities fraud and its authority to find them guilty of it.

V. Petitioners Are Not Entitled To Dismissal Of The Complaints In Their Entirety In Any Event.

Petitioners assume that if the allegations they identify do trigger SLUSA, then respondents' complaints must be dismissed in their entirety. That issue is not encompassed by the Question Presented. If the judgment below is not affirmed, the plaintiffs' right to proceed further should be addressed by the court of appeals on remand. The better view is that SLUSA requires the dismissal of only those claims that depend on the prohibited allegations, and the plaintiffs may amend their complaints to delete non-essential allegations. *See Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1226-27 (9th Cir. 2009); *In re Lord Abbett Mut. Funds Fee Litig.*, 553 F.3d 248, 255-57 (3d Cir. 2009); *Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25, 47 (2d Cir.2005), *rev'd on other grounds*, 547 U.S. 71 (2006). The court of appeals also may determine in the first instance whether the claims of the *Roland* plaintiffs may proceed in state court because once the Fifth Circuit entered its remand

order, 28 U.S.C. § 1447(d) deprived the federal courts of further appellate jurisdiction. *See Kircher v. Putnam Funds Trust*, 547 U.S. 633, 648 (2006); *Roland* Br. in Opp. 7-9.

CONCLUSION

The judgment of the Fifth Circuit should be affirmed.

Respectfully submitted,

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REPLY BRIEF

No. 12-86

In the
Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; AND SEI INVESTMENTS COMPANY,
Petitioners,

v.

SAMUEL TROICE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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CORPORATE DISCLOSURE STATEMENT

Petitioners Willis Limited and Willis of Colorado, Inc., are indirect, wholly owned subsidiaries of Willis Group Holdings Public Limited Company, a publicly held corporation listed on the New York Stock Exchange. No other publicly held corporation owns 10% or more of Willis Group Holdings' stock.

Petitioner Bowen, Miclette & Britt does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

Petitioner SEI Investments Company does not have a parent corporation, and no publicly held corporation owns 10% or more of its stock.

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REPLY BRIEF FOR PETITIONERS

Respondents' state-law class-action claims are precluded by SLUSA for the straightforward reason that material misrepresentations *about* covered securities transactions were at the very core of the Stanford Ponzi scheme. There is no question that the misrepresentations about purchases of covered securities were material to the scheme, as Respondents themselves unambiguously pled as much in their complaints. Specifically, Respondents alleged that misrepresentations by SIB that proceeds from the sale of certificates of deposit ("CDs") would be used to purchase covered securities were "material misstatements" integral to the scheme's promise of high returns and low risk with liquidity. Stanford claimed that SIB CDs were superior to other CDs because they had higher rates of return and could be redeemed at any time, and it was SIB's purported purchases of covered securities that Respondents allege made these claimed returns and liquidity believable. Respondents' claims are thus precluded under a straightforward application of SLUSA because the complaints allege material misrepresentations in connection with the purchase of covered securities.

I. Both courts below recognized that the complaints allege at least one material misrepresentation about covered securities transactions. But while the district court correctly treated this fact as dispositive under SLUSA, the Fifth Circuit reasoned that SLUSA does not apply because that misrepresentation was "but one of a host of (mis)representations made to the Appellants."

Pet.App.36. The Fifth Circuit's reasoning is plainly wrong because only a single misrepresentation is needed to trigger preclusion. Indeed, rather than relying on the Fifth Circuit's reasoning, Respondents advance several new theories for why they should prevail, each of which lacks merit.

Respondents' lead argument is that SLUSA does not apply unless the plaintiffs are promised an "interest" (by which they presumably mean an *ownership* interest) in covered securities. This Court, however, has never required that the fraud victim have an interest in covered securities. And Respondents' novel "interest" requirement has no basis in the broad, flexible language of SLUSA, which requires only a misrepresentation in connection with "the" purchase or sale of covered securities, not the *plaintiff's* purchase or sale of covered securities. 15 U.S.C. § 78bb(f)(1)(A). Nor does that requirement have any grounding in common sense. When an investor parts with his money based on a misrepresentation about covered securities, it makes no difference whether a promised direct interest in the securities was part of the scheme. In the Madoff scheme, some invested directly in covered securities and others invested only indirectly through non-covered feeder funds. But all were equally deceived by material misrepresentations about covered securities transactions. There is no basis in either SLUSA's text or common sense to draw a distinction between the two groups. SLUSA does not require the plaintiff to be the direct purchaser or seller of an interest in the covered security, as this Court emphasized in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006).

Respondents' other main argument is that the "in connection with" requirement cannot be satisfied unless the fraud strictly coincides with the securities transaction. This argument is based on a fundamental misreading of this Court's precedents. While this Court has emphasized that "it is *enough*" that a material misrepresentation and a covered securities transaction coincide, the Court did not make strict temporal coincidence a requirement. *See Dabit*, 547 U.S. at 80, 85 (emphasis added). Rather, in emphasizing that "in connection with" must be broadly construed, the Court noted that coincidence was just one way that the "in connection with" requirement—which remains the ultimate test under the statutory text—could be satisfied. *Id.* Respondents' argument is likewise inconsistent with common sense. It is no less securities fraud to take investors' money based on a false promise to purchase covered securities next week or next year, rather than immediately.

Moreover, Respondents' attempt to decouple Stanford's misrepresentations about subsequent purchases of liquid covered securities from the rest of the scheme misconstrues not just the governing law, but also the Stanford scheme itself. SIB's CD sales and its promised purchases of covered securities were not "separate events" or "distinct" frauds, as Respondents now suggest. Rather, both were directly and inextricably linked to the broader Stanford Ponzi scheme. It was the claimed purchases of covered securities that imbued the SIB CDs with their "most important" attribute and competitive advantage over other CDs—investors' ability to redeem them on short notice.

Respondents suggest that extending SLUSA to misrepresentations about covered securities transactions will give it an overly broad scope and seek to demonstrate this with a series of fanciful hypotheticals. But these hypotheticals are off-base because they ignore SLUSA's materiality requirement. In many fraudulent schemes, a gratuitous reference that the proceeds will be invested in covered securities will be just that, gratuitous and non-material. In a fraudulent investment scheme, by contrast, in which safety and liquidity are critical, such references are hardly gratuitous. They are highly material to investors' decisions and the success of the fraud. Moreover, there is no need to speculate as to whether the references here to purchases of covered securities were gratuitous or material—Respondents pled *in haec verba* that they were "material misstatements."

Remarkably, Respondents now contradict their own complaints, suggesting in passing that Stanford's misrepresentations about covered securities were not, in fact, material. This is surprising both because the promised purchases of covered securities were integral to the fraud—it is what ensured not just high returns but low risk with liquidity—and because Respondents did not argue otherwise before the district court or Fifth Circuit. It would be plainly inappropriate to allow them to contest that issue for the first time before this Court.

II. Respondents' policy-based arguments fare no better. Although Respondents claim that this case does not implicate federal interests, the Stanford Ponzi scheme was a *nationwide* fraud that

unquestionably undermined public confidence in the securities markets. All concede that the SEC has authority to address such Ponzi schemes because of their significant impact on investor confidence.

The SEC's undoubted authority to address such schemes—regardless of how the Court resolves the "in connection with" question at issue here—makes Respondents' effort to invoke the specter of expanding SEC's jurisdiction mystifying. No matter how the Court resolves this case, the SEC will have the power to address misrepresentations about non-covered securities and to prosecute aiders and abettors, just as in *Dabit* the SEC possessed the undoubted authority to remedy misrepresentations directed at holders. Thus, here, as in *Dabit*, the salient question has nothing to do with the SEC's jurisdiction and everything to do with vindicating SLUSA's anti-circumvention rationale.

Respondents' strained effort to implicate federalism concerns is equally mystifying. SLUSA precludes only class actions of fifty or more plaintiffs, so all of Respondents' hypotheticals about misrepresentations in loan applications or between suitors will remain firmly in state court. SLUSA also carves out claims by States and state pension funds. But when it comes to class actions impacting national securities markets and thousands of private investors, SLUSA's impact on state court proceedings is fully intentional. Congress clearly thought that such suits, which traditionally had been brought in federal court, should proceed in federal court subject to the PSLRA or not at all.

For this reason, Respondents' final policy argument—that SLUSA preclusion will prevent them from pursuing class-action claims against secondary actors forbidden by federal law—gets matters exactly backwards. The core purpose of SLUSA is in fact to *prevent* plaintiffs from using state-law class-actions to plead around important limits on federal claims (including those established by this Court in *Stoneridge* and *Central Bank*). In *Dabit*, for example, rather than finding it problematic that class-action holder claims could not be pursued in state or federal court, this Court unanimously held that such claims could not proceed because they would severely undermine SLUSA's anti-circumvention purpose. The same reasoning is squarely applicable here—allowing Respondents' claims to proceed would significantly undermine the important purposes of the PSLRA and SLUSA.

ARGUMENT

I. Respondents' Claims Are Precluded Under A Straightforward Application Of SLUSA.

At the outset, it is important to recognize that Respondents' complaints do not allege misrepresentations about covered securities in the abstract. Rather, the complaints allege misrepresentations about actual *transactions* in covered securities—namely, that "their money" would be invested in covered securities. Respondents' brief proceeds as if any mention of covered securities in the complaint was incidental, and as if Petitioners view any incidental misrepresentation about a covered security as sufficient. Neither premise is correct. What SLUSA requires is "a

misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). And surely a misrepresentation about a subsequent, contemplated transaction in covered securities—that Respondents themselves characterize as "material" in their complaints—suffices. Indeed, a misrepresentation about how the proceeds of an investment will be invested is a classic case of securities fraud, and it is what Respondents, in fact, alleged.

The complaints allege in no uncertain terms that "Stanford Financial led Plaintiffs, verbally and through written marketing materials ... to believe that *their money was being invested* in safe, liquid investments that were insured." Willis/BMB Complaint ¶180 (JA 715) (emphasis added). Respondents were led to believe that "investments in the CDs were liquid and the CDs could be redeemed at any time because SIB, through Stanford Financial, invested the money in safe, secure, and liquid assets." *Id.* ¶34 (JA 628). The complaints thus make clear that there was a direct connection between the misrepresentations about covered securities transactions and Respondents' decision to invest "their money" with Stanford.[1]

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[1] Respondents suggest (at 29) that the *Roland* and *Farr* complaints do not allege that newly invested funds would be used to purchase covered securities. But the Complaints allege that Stanford's "marketing plan" included misrepresentations that "SIB re-invested those funds [from CD sales] in a 'globally diversified portfolio' of assets." Roland Complaint ¶23 (JA 250); Farr Complaint ¶25 (JA 342). Respondents further allege that, according to representations made by SIB, the bank's assets were invested in "'a well-diversified portfolio of highly

The misrepresentation that "their money" would be reinvested in covered securities was central to the fraudulent scheme. This misrepresentation lured investors both by touting higher rates of return, and by purportedly allowing investors to redeem their CDs at any time. Many bank CDs do not allow redemption before a fixed period of time has elapsed, often six months or longer. SIB, in contrast, touted the fact that its CDs could be redeemed *at any time* because the investors' funds were purportedly being invested in highly liquid, publicly traded securities (as opposed to less-liquid assets, such as loans or real estate). *See* Willis/BMB Complaint ¶121 (JA 675) ("SIB's investments were liquid and diversified, and therefore ... the CDs themselves were highly liquid and could be redeemed with just a few days' notice"); Roland Complaint ¶12 (JA 244); Farr Complaint ¶14 (JA 336) (SIB's assets could be "readily liquidated to provide redemption payments").

Those misrepresentations were unquestionably material. Respondents' own complaints make clear that but for these misrepresentations they would not have purchased the CDs. *See* Farr Complaint ¶¶36-41 (JA 345-47) (Respondents "would not have purchased the SIB CDs" if they had known that SIB's assets were not being invested in "liquid financial instruments"); Roland Complaint ¶¶34-39 (JA 253-55); Willis/BMB Complaint ¶¶34, 180 (JA 628, 715).

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marketable securities issued by stable governments, strong multinational companies and major international banks.'" Roland Complaint ¶¶20, 35-36 (JA 249, 253); Farr Complaint ¶¶22, 37-38 (JA 341, 345).

II. Respondents Fail To Escape SLUSA's Plain Text.

Noticeably absent from Respondents' brief is any defense of the Fifth Circuit's conclusion that SLUSA should not apply because the misrepresentations about covered securities were "but one of a host of (mis)representations made to the Appellants." Pet.App.36. As Petitioners explained, SLUSA requires only a single misrepresentation about the purchase of covered securities, and the Fifth Circuit readily acknowledged that Respondents' complaints alleged at least one such misrepresentation. The fact that Respondents' complaints also include *other* allegations that did not concern covered securities is irrelevant. Pet. Br. 33-37.

Although they abandon the reasoning that brought them this far, Respondents raise several other reasons why SLUSA should not apply, each of which lacks merit.

A. SLUSA Preclusion Does Not Turn on Whether the Plaintiff Had an "Interest" in Covered Securities.

Respondents' primary argument (at 12, 16, 30-34) is that SLUSA does not apply because investors in SIB CDs did not acquire an "interest" in the covered securities that SIB was supposedly purchasing. Although Respondents do not elaborate on what they mean by "interest," let alone explain its grounding in SLUSA's text, they are presumably referring to a direct *ownership* interest. Respondents suggest their lack of an "interest" in covered securities both renders SLUSA inapplicable and

distinguishes this case from the Madoff Ponzi scheme. Respondents are wrong on both counts.

First, nothing in the broad and flexible text of SLUSA limits preclusion to cases in which the victims obtained a direct ownership "interest" in covered securities. The statute requires a misrepresentation in connection with "the purchase or sale of a covered security," 15 U.S.C. § 78bb(f)(1)(A), not "the purchase or sale of a covered security *by the plaintiff*." This Court recognized as much in *Dabit*, holding that SLUSA may apply to class actions brought by persons—like Respondents—who were not *themselves* purchasers or sellers of covered securities. The requisite showing is "deception 'in connection with the purchase or sale of any security,' not deception of an identifiable purchaser or seller." *Dabit*, 547 U.S. at 85; *see id.* at 89 (SLUSA does not turn on "the identity of the plaintiffs"). Nothing in the statute requires that the plaintiff *directly own* covered securities as long as there has been a misrepresentation in connection with a covered securities transaction.

The problem with Respondents' counter-textual theory is not just doctrinal; it simply makes no sense to distinguish between direct and indirect investors. If a misrepresentation about covered securities caused investors to part with their money, it should make no difference whether the investors purportedly obtained a direct interest in the covered security or a more indirect interest backed by the covered security. Yet Respondents would make this irrelevant detail of the fraudulent scheme outcome determinative. But Ponzi schemes and securities

fraud take many different forms, often involving complicated structures or multiple layers of separation between the victim's investment and the purchase or sale of covered securities, which is why this Court has interpreted "in connection with" "'flexibly, not technically and restrictively.'" *SEC v. Zandford*, 535 U.S. 813, 821 (2002).

The incoherence of a direct/indirect interest distinction is well-illustrated by the Madoff scheme. While some invested directly in the Madoff master fund—which purportedly invested in covered securities—many of the victims invested in non-covered "feeder funds," which in turn invested in the master fund. *See, e.g., In re Beacon Assocs.*, 745 F. Supp. 2d 386, 393-94 (S.D.N.Y. 2010). The vast majority of federal courts have sensibly refused to distinguish between these two groups of victims for SLUSA purposes. *Id.* at 429-30; *see* Pet. Br. 39-41 & n.10.

Respondents seek (at 16-17, 34) to distinguish the Madoff cases on the ground that investors in the Madoff scheme acquired "some interest" in covered securities. That is demonstrably wrong. The feeder funds sold limited partnership interests that "did not confer an ownership interest in money that the Feeder Fund ultimately invested [with Madoff]," *In re Bernard L. Madoff Inv. Sec.*, 708 F.3d 422, 427 (2d Cir. 2013), let alone in the covered securities Madoff ostensibly purchased with that money. Feeder fund investors thus had no "interest" in covered securities, other than the expectation that they would receive the *derivative* benefits of Madoff's investment in such securities. Here, too, investors in SIB CDs expected

that the recipient of their money would invest the funds in covered securities for the investors' benefit—*i.e.*, to provide unusually high returns as well as a high degree of liquidity. *See* Willis/BMB Complaint ¶¶34, 129, 180 (JA 627-28, 680, 714-15).

B. Stanford's Misrepresentations Were Plainly "In Connection With" the Purchase of Covered Securities.

Respondents also advance a novel interpretation of what "in connection with" means. This Court has consistently interpreted the phrase "in connection with" broadly in both the SLUSA and Rule 10b-5 contexts. Part and parcel of that broad, flexible—and not technical or restrictive—interpretation is the recognition that "it is enough that the fraud alleged 'coincide' with a securities transaction." *Dabit*, 547 U.S. at 85. Remarkably, Respondents seek to convert the permissive rule that it is sufficient for the misrepresentation and transaction to coincide into a restrictive rule that the misrepresentation and transaction must necessarily coincide, even when some other more direct connection exists. Respondents then invoke this restrictive (mis)reading of "coincide" to contend (at 15, 34-36) that Stanford's misrepresentations do not "coincide" with the purchase of covered securities because the Stanford fraud was "complete *immediately*" upon the sale of the CDs, and thus "distinct" from "any later purchase or non-purchase of a covered security."

This argument is deeply flawed as a matter of both law and fact. First, it ignores that this Court has treated the temporal coincidence of the misrepresentation and the securities transaction as

just one way to show the requisite connection. It is "enough" for the misrepresentation and transaction to coincide, but it is not necessary. A false promise to purchase covered securities next week or next year—for example, through a stop order or limit order—is no less securities fraud than a false promise to do so immediately. Thus, even were it possible to separate out the purchase of the CDs based on false promises from the false promise to use the proceeds to purchase covered securities, it would make no difference legally. A false promise that the proceeds of an investment will be invested in covered securities is a classic case of securities fraud, even when there is some delay concerning the purported investment of the proceeds.

But, equally fundamentally, Respondents' effort to separate the misrepresentations about covered securities from the rest of the Stanford Ponzi scheme simply ignores the reality of the scheme. SIB's CD sales and its promised purchases of covered securities were not two "separate events" or "distinct" frauds, as Respondents now contend; rather, they were both integral parts of the broader Stanford Ponzi scheme. *See Zandford*, 535 U.S. at 820 ("The securities sales and respondent's fraudulent practices were not independent events"). As Respondents' own complaints make clear, the misrepresentations about SIB's purchases of covered securities were the very device by which Stanford convinced Respondents to part with "their money"; it was the claimed purchase of covered securities that purportedly imbued SIB CDs with high liquidity and thus made them superior to other CDs. *See supra* 6-8; Pet. Br. 28-32.

The close connection between the SIB CDs and the promised purchase of covered securities is certainly not severed because SIB did not follow through on its promise to purchase covered securities, or that the purchase would occur after the CDs were purchased. It is the contemporaneous *promise* to purchase covered securities—whether immediately or in the future—that matters, not whether the fraudster follows through.[2] Otherwise, the most egregious frauds would go unremedied. Although Respondents argue that the fraud was "complete immediately" after the fraudster obtained the proceeds, and that the subsequent non-purchase of securities was a "distinct" fraud, courts have repeatedly held to the contrary and applied SLUSA to misrepresentations about intended securities transactions even if "no proof exists that a [covered] security was actually bought or sold." *Grippo v. Perazzo*, 357 F.3d 1218, 1223 (11th Cir. 2004); *accord Zandford*, 535 U.S. at 819 ("broker who accepts payment for securities that he never intends to deliver" violates Rule 10b-5); *see* Pet. Br. 38-40 & n.9.

For the same reasons, Respondents' heavy reliance (at 35-36) on *O'Hagan* is misplaced. In that

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[2] Respondents (at 21-29) spend several pages arguing that misrepresentations about SIB's *existing* portfolio of securities purchased in the past cannot give rise to preclusion. This is a straw-man argument that the Court need not reach because SIB also asserted, falsely, that the proceeds from *new* investments would be used to purchase covered securities. Regardless, Respondents offer no persuasive reason why a misrepresentation about a *recent* purchase of securities would not meet the statutory "in connection with" requirement as clarified in *Zandford* and *Dabit*.

case, the Court noted that the "in connection with" requirement would not be satisfied if the fraudster merely "'used the proceeds of the misdeed to purchase securities.'" *United States v. O'Hagan*, 521 U.S. 642, 656-57 (1997). But this is not a case of mere use of proceeds to purchase securities; this is a case about a false assurance that the proceeds would be invested in covered securities—and the false assurance was specifically intended to lure investors and help perpetrate the fraud. The securities laws are not implicated just because a fraudster thinks the securities markets will provide the best return on ill-gotten gain, which is all the *O'Hagan* dictum addressed. But when, as here, the fraudster lures investors through affirmative representations that the proceeds of an investment will be invested in covered securities so that the investment is both safe and liquid, then the securities laws are fully implicated.

C. The Misrepresentations About Covered Securities Were Clearly "Material."

Respondents warn against an overly broad construction of "in connection with" and invoke (at 26-29) a number of fanciful hypotheticals to illustrate the statute's purported breadth. But Respondents' effort ignores the independent statutory requirement that the misrepresentation not only be "in connection with" a covered securities transaction, but also be material. A fraudster's gratuitous mention that he planned to invest the proceeds of a transaction into IBM stock would hardly qualify as material. But when a financial instrument is touted as highly liquid because the proceeds are invested in covered

securities, there is no doubt that both statutory requirements are satisfied.

Respondents suggest (at 36-39), for the first time in this litigation, that Stanford's misrepresentations about covered securities were not "material." This is astonishing because Respondents conceded materiality in all previous proceedings. Their own complaints allege in no uncertain terms that "Stanford Financial led Plaintiffs ... to believe that their money was being invested in safe, liquid investments that were insured, *which was a material misstatement* because the money was not invested in safe, liquid and fully insured investments." Willis/BMB Complaint ¶180 (JA 715) (emphasis added); *see* Roland Complaint ¶12 (JA 244-45); Farr Complaint ¶14 (JA 336-37) (listing SIB's statements about the liquidity of its invested assets as "[m]aterial [r]epresentations"). Respondents' attempt to disavow that concession and contest materiality for the first time before this Court must be rejected. *See Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("[W]e are a court of review, not of first view.").

In all events, Respondents were correct to concede materiality below. According to the complaint, brokers and advisers were told that the "'liquidity/marketability of SIB's invested assets' was the '*most important factor* to provide security to SIB's clients.'" Willis/BMB Complaint ¶121 (JA 675) (emphasis added); *see* Roland Complaint ¶20 (JA 249) (same); Farr Complaint ¶22 (JA 341). Stanford assured investors that "SIB's investments were liquid and diversified and therefore that the CDs themselves were highly liquid and could be redeemed

with just a few days' notice." *Id.* That is, SIB claimed that its CDs were superior to other CDs because SIB's investments in liquid, covered securities allowed investors to recover their money on short notice.[3]

* * *

In the end, the statutory question here is not close. SLUSA requires a material misrepresentation "in connection with" a transaction in covered securities. When the material misrepresentation not only coincides with covered securities transactions, but is about covered securities transactions, the statute is easily satisfied. Taking someone's money based on a false promise to invest the proceeds in covered securities is a classic form of securities fraud. That was the heart of the fraud both here and in the Madoff scheme. It matters not whether the investors received CDs, shares in a "feeder fund," or a brokerage statement purporting to reflect a direct interest in covered securities that do not exist. What matters is that a misrepresentation in connection with covered securities transactions was material to the victims' decision to part with their money. That

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[3] Respondents strain credulity by asserting (at 54) that they could have avoided SLUSA by simply omitting any reference to covered securities. A complaint without those allegations would have made little sense because it would not have explained *how* Stanford was able to offer a financial product with above-market returns as well as high liquidity, let alone explain why third parties like Petitioners bore responsibility for Respondents' losses. *See* U.S. Amicus Br. 30-31. Indeed, the fact that Respondents *did* include these allegations in their complaints despite the risks of SLUSA preclusion only underscores their materiality.

is what happened here, and SLUSA requires nothing more.

III. Precluding Respondents' Claims Advances The Purposes Of SLUSA.

Respondents' policy arguments are equally unavailing. First, Respondents suggest that this case will enlarge the SEC's jurisdiction to frauds that do not implicate the concerns of the federal securities laws. This argument is clearly wrong because no matter how this Court resolves the "in connection with" question, the SEC has the undoubted authority to address the Stanford fraud. Second, Respondents invoke federalism concerns, but SLUSA does not impact garden-variety frauds with less than fifty victims, and SLUSA's impact on efforts to repackage federal securities class actions as state-law cases was precisely what Congress intended. Finally, Respondents complain about their inability to reach aiders and abettors, but limitations on such suits is just a feature of federal securities laws that Congress did not want circumvented when it enacted SLUSA.

A. The Stanford Ponzi Scheme Is Precisely the Type of Case That Should Be Governed by Uniform Federal Standards.

Respondents contend (at 42) that this case "does not implicate the securities laws' *raison d'etre*: to protect the integrity of and public confidence in the federally regulated market for covered securities." That assertion is baffling, as it is difficult to imagine a case that does more harm to "public confidence" in the securities markets than the Stanford fraud.

In contrast to an individual broker's deceit of a handful of clients, Stanford's fraud harmed thousands of victims. Large-scale Ponzi schemes, like the Stanford and Madoff frauds, have an immense effect on public confidence in the markets. *See, e.g.*, Krauss, *Texas Firm Accused of $8 Billion Fraud*, New York Times (Feb. 17, 2009) (Stanford scheme "likely to further erode confidence among investors who place money with investment advisors"); Carney, *The Madoff Effect: Investor Confidence Crushed*, Business Insider (Dec. 15, 2008) (Madoff revelations set the stage "for the worst crisis in investor confidence since the Great Depression").

Because of their immense effect on investor confidence, all concede that the SEC has ample authority to police such Ponzi schemes regardless of how this Court construes the "in connection with" requirement. Indeed, even Respondents recognized the strong federal interest in this case, when they filed their complaint alleging that "Stanford Financial was operating as an outlaw, illegal investment company, not registered under the [federal] Investment Company Act." Willis/BMB Complaint ¶119 (JA 673-74).[4]

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[4] Respondents suggest (at 42-45) that SLUSA applies only where the fraudulent scheme disturbs the market for *specific securities*, but that argument is foreclosed by *Zandford*. There the Court expressly rejected the idea that the securities laws require "a misrepresentation about the value of a particular security," 535 U.S. at 820, or "'manipulation of a particular security,'" *id.* at 821. Instead, the inquiry is simply whether the plaintiffs were "injured as investors through respondent's deceptions." *Id.* at 822. Nor is there any merit to *amici*'s suggestion that SLUSA applies only to "strike suits" against

The SEC's undoubted authority to address such Ponzi schemes no matter how this Court resolves the question presented here makes Respondents' effort to make this case about the scope of the SEC's jurisdiction—and not about SLUSA's scope—puzzling. To repeat, no matter what this Court says about the "in connection with" requirement, the SEC's jurisdiction, which extends to non-covered "securities" like SIB's CDs, will be broad enough to reach cases like this.[5] Thus, this case is all about SLUSA's reach, not the SEC's reach. In that regard, this case is parallel to *Dabit*. There, the SEC had undoubted authority to reach frauds directed at holders, even though private holder claims were precluded. And here, the SEC has undoubted authority to address the Stanford scheme, including aiders and abettors of that scheme, even if SLUSA precludes such claims. Thus, as in *Dabit*, the question is SLUSA's reach, and that question is resolved by the statutory text, not misplaced concerns about the SEC's jurisdiction.

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issuers of securities. *See* Public Investors Bar Ass'n Br. 9-12. Preventing strike suits was *one* of Congress' purposes in enacting SLUSA but nothing in the statute limits preclusion to that narrow subset of cases.

[5] And but for limitations on aiding-and-abetting liability, Respondents could bring a Rule 10b-5 action based on the alleged misrepresentations about SIB's CDs, which are "securities" for purposes of Rule 10b-5. Thus, Respondents' concerns about the scope of the SEC's jurisdiction or the breadth of federal private securities litigation are misplaced. The salient question here is solely SLUSA's scope.

B. Petitioners' Interpretation of SLUSA Does Not Upset the Federal-State Balance.

Respondents' strained effort to invoke federalism concerns (at 43-48) also fails. SLUSA accommodates the traditional role of state courts in adjudicating garden-variety fraud claims by leaving fraud cases with fewer than fifty victims—as well as derivative actions brought on behalf of a corporation, *see* 15 U.S.C. § 78bb(f)(5)(C)—wholly unaffected. And SLUSA also accommodates the unique interests of States through express carve-outs for any action brought by "a State or political subdivision ... or a State pension plan," and by expressly preserving States' jurisdiction to "investigate and bring enforcement actions" with respect to covered securities. *Id.* §§ 78bb(f)(3)-(4).

To the extent SLUSA has an effect on private class actions involving misrepresentations about covered securities and more than fifty plaintiffs, that is precisely what Congress intended. Such suits were hardly the traditional subject of state-court lawsuits. Indeed, the whole point of SLUSA was to "stem" the migration "from Federal to State courts" of claims that but for the PSLRA would have remained federal securities actions. *Dabit*, 547 U.S. at 82. Congress specifically intended that such traditionally federal cases should *not be* governed by state law but instead should continue to be subject to uniform "national standards." 112 Stat. 3227, § 2(5). Thus, Respondents' concerns about disturbing the traditional jurisdiction of state courts are misplaced, as this Court recognized in *Dabit*. In enacting

SLUSA, Congress displayed "sensitivity to state prerogatives in this field" by limiting SLUSA's reach to certain types of actions, thus demonstrating that the preclusive effect on cases like this one is entirely intentional and appropriate. *Dabit*, 547 U.S. at 87-88.

C. Respondents' Interpretation of SLUSA Would Facilitate Evasion of the PSLRA and Undermine Important Limits on Secondary Liability.

Respondents' final policy argument (at 46-49) is a direct assault on both this Court's precedents limiting secondary liability and Congress' judgment in SLUSA to prevent circumvention of the PSLRA. Specifically, Respondents complain that Petitioners' interpretation of SLUSA might result in "immunity" from private civil liability for secondary actors far removed from the actual fraud. But any such "immunity" is the product of Congress' policy choices under the PSLRA, and this Court's decisions refusing to recognize a private right of action against secondary actors under Rule 10b-5. The whole point of SLUSA was to prevent those federal laws from being circumvented; thus, the preclusion of certain suits against secondary actors is entirely appropriate.

This Court has recognized several times that concerns about vexatious litigation are especially pronounced when the defendants are third-party actors far removed from the underlying fraud. As the Court explained, "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets."

Central Bank of Denver v. First Interstate Bank, 511 U.S. 164, 188 (1994). Securities fraud litigation "requires secondary actors to expend large sums even for pretrial defense and the negotiation of settlements." *Id.* at 189. This "uncertainty and excessive litigation" will likely fall the hardest on "newer and smaller companies" and professional services firms that may be the targets of third-party securities fraud claims. *Id.*

Perhaps with this in mind, Respondents now seek to portray Willis, BMB, SEI, and the other Petitioners as directly responsible, arguing (at 6) that Willis and BMB "knew that Stanford was engaged in a massive fraud." To be clear: the complaints contain no such allegation. As commercial insurance brokers,[6] Willis and BMB merely helped SIB procure ordinary commercial insurance policies that were completely unrelated to the fraudulent CDs, in exchange for standard brokerage fees. Respondents allege that Petitioners—no different from the SEC, banking regulators, and countless sophisticated investors—missed "red flags" or *should have known* about the fraud. *See* Willis/BMB Complaint ¶¶107, 125, 127 (JA 667, 678-79). But these are exactly the types of speculative claims against deep-pocketed, tangential third parties that this Court refused to recognize in *Stoneridge* and *Central Bank*.

Respondents' complaint (at 47-48) about "immunity" for secondary actors is thus not merely misplaced, it misses the whole thrust of SLUSA. One

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[6] Respondents mischaracterize Willis and BMB as "insurers." They are insurance brokers (intermediaries) and not insurance companies.

could equally describe *Dabit* as granting "immunity" for holder claims. The combined effect of *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975), and SLUSA meant that holder class actions could not be brought in state or federal court. But rather than fret that it was creating immunity, this Court recognized that it would be "odd, to say the least," to construe SLUSA as "exempting" a set of class actions that the Supreme Court had already found "particularly troublesome." *Dabit*, 547 U.S. at 86. The resulting holding was not a grant of immunity, but the avoidance of a perverse ruling in which only uniquely disfavored claims could proceed in state court. That reasoning applies directly here. This Court has already refused to carve out claims by especially tangential plaintiffs, and it should equally reject Respondents' invitation to carve out claims against especially tangential defendants.[7]

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[7] Respondents (at 50 n.*) accuse Petitioners of "falsely impugn[ing] another member of the bar" for suggesting that Respondents brought their claims under state law to avoid the PSLRA, *Stoneridge*, and *Central Bank*. This umbrage is doubly misplaced. First, there is nothing unethical about maneuvering to avoid a less-favorable forum. The problem with such gambits is not that they violate ethical canons but that they are contrary to SLUSA's anti-circumvention rationale. Second, the article, which was cited without objection at the certiorari stage, speaks for itself. Edward Snyder, the "co-lead plaintiffs counsel" told *The Litigation Daily* that he was "thrilled" with the Fifth Circuit's decision because the district court "had thrown a major monkey wrench in the plaintiffs' strategy of filing their class claims under state law." Julie Triedman, *Fifth Circuit Green-Lights $7 Billion Claims*, AmLaw Daily (Mar. 20, 2012). One sentence later, the article noted that "[t]he strategy was an attempt to get around the U.S. Supreme Court's rulings in [*Central Bank*] and [*Stoneridge*], which have been the death

IV. Respondents' Complaints Should Be Dismissed In Their Entirety.

Respondents (at 59-60) assert that if this Court reverses the decision below, it should remand to the Fifth Circuit to address whether Respondents have a "right to proceed further" on any of their claims. That would be wholly inappropriate, as the district court has already determined that the complaints are precluded *in their entirety*. *See* Pet.App.74-75, 77. If this Court determines that SLUSA applies, the only remaining step is to remand with instructions to dismiss the complaints.

CONCLUSION

The judgment of the court of appeals should be reversed.

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knell to federal securities law claims against third party advisors." *Id.*

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WILLIS OF COLORADO, INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; AND SEI INVESTMENTS COMPANY,
Petitioners,

v.

SAMUEL TROICE, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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SUPPLEMENTAL BRIEF FOR RESPONDENTS IN RESPONSE TO BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE*

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Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS IN RESPONSE TO BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE*

INTRODUCTION

The *Roland* and *Farr* Respondents present this Supplemental Brief to the Brief of the United States as Amicus Curiae filed on December 14, 2012. A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated

rule of law. Sup. Ct. R. 10.[1] The United States has correctly stated the decision of the United States Court of Appeals for the Fifth Circuit does not conflict with a decision of any other United States court of appeals on the same important matter.[2] Further, the United States points out that no circuit court conflict exists via application of the Fifth Circuit's "tangentially related" rule to transactions in which "misrepresentations concerning supposed purchases and sales of covered securities induced investors to buy uncovered securities."[3] The United States disagreed with the factual determinations of the Fifth Circuit on the relative importance of the misrepresentations relating to alleged covered securities

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[1] All references to "U.S. Br." are to the "Brief of the United States as Amicus Curiae" filed with the United States Supreme Court on December 14, 2012. All defined terms are the same terms used in that brief.

[2] *See* U.S. Br. 17: "Petitioners assert . . . that the Fifth Circuit diverged from other circuits in finding such misrepresentations relevant to the 'in connection with' inquiry. That assertion is mistaken."

[3] U.S. Br. 13. "[P]etitioners rely on no other court of appeals decision applying SLUSA to misrepresentations about covered securities that were designed to induce investments in uncovered securities." U.S. Br. 20. "This case therefore would be a poor vehicle for clarifying SLUSA's application to more usual fact patterns." U.S. Br. 20. "But none of the decisions on which petitioners rely analyzed a multi-layered transaction in which misrepresentations concerning supposed purchases and sales of covered securities induced investors to buy uncovered securities." U.S. Br. 13. "At the core of SLUSA preclusion are cases in which the defendant misrepresents facts about a covered security in order to induce purchases or sales *of that security*, or to affect the market in that security." U.S. Br. 11-12 (emphasis in original). "To be sure, the scheme alleged here is relatively far removed from the paradigmatic SLUSA-precluded case." U.S. Br. 11.

as compared to the other fraudulent elements of the overall Stanford Ponzi scheme. The resolution of this threshold issue involves a question of whether there was an "erroneous factual findings" by the Fifth Circuit. The "erroneous factual findings" should not be reviewed by the Court as recognized by Sup. Ct. R. 10.

REASONS FOR DENYING THE PETITION

I. THE UNITED STATES' ANALYSIS OF THE FIFTH CIRCUIT'S APPLICATION OF THE "IN CONNECTION WITH" TEST IS DRIVEN BY CONCERNS OF LIMITATIONS ON THE SEC'S ENFORCEMENT POWERS.

Notwithstanding the United States' recommendation that the writ not be granted, the United States, in its brief, states that the "Fifth Circuit erred . . . in applying that standard to the facts of this case." U.S. Br. 10. The "in connection with" language being interpreted under SLUSA is the same language that determines the scope of the enforcement powers of the SEC under 17 C.F.R. §240.10b-5 ("Rule 10b-5"). *See Merrill Lynch, Pierce, Fenner and Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006). The SEC's underlying concern is that the factual application of the "in connection with" test via the "more than tangentially related" standard by the Fifth Circuit in this case has the potential to restrict the SEC's enforcement rights and the application of Rule 10b-5 in the future. Because of the statutory mandate of the SEC in pursuing enforcement actions under Rule 10b-5, the SEC has no choice but to argue that the factual allegations in the complaint would give rise to a cause of action under Rule 10b-5. It would be a most

unusual situation for the SEC to ever support the ruling of any court, regardless of the reasoning, that has the potential to limit its enforcement power under Rule 10b-5.

Despite its disagreement with the factual findings of the Fifth Circuit, the United States submits that "Review would be unwarranted in this case, moreover, even if the current body of appellate precedent suggested widespread confusion as to the proper construction of SLUSA's 'in connection with' requirement." U.S. Br. 20. Further, the United States concludes that "The unusual nature of the allegations here also suggests that petitioners' fears about forum-shopping and unreviewability of future SLUSA cases (*e.g.*, 12-79 Pet. 25, 31; 12-88 Pet. 31) are overstated. The Fifth Circuit's decision seems unlikely to motivate plaintiffs in typical SLUSA-related cases to flock to courts within that circuit." U.S. Br. 20, fn. 7.

The United States acknowledges that this case does not in actuality present a precedent that will likely be relied upon in the future for the limitation of enforcement power under Rule 10b-5. Further, in tiered investments like the facts at bar, the scope of the enforcement power is not an issue because enforcement actions can be brought against both covered and non-covered securities. U.S. Br. 5, fn. 3. Any perceived threat to the SEC's enforcement powers based upon the facts of this case does not exist and mandates a denial of the writ application.

II. THE UNITED STATES RECOGNIZES THAT THE WRIT APPLICANTS ARE SEEKING REVIEW OF DISPUTED FACTUAL ISSUES AND THE APPLICATION OF THOSE FACTS.

The United States asserts that "In assessing whether the alleged fraud was 'more than tangentially related' to a purchase or sale of covered securities, the [Fifth Circuit] underestimated the role that the statements about SIB's investment portfolio played in the Stanford scheme." U.S. Br. 10. In arguing that the Fifth Circuit "underestimated the role" of the covered securities, the United States is forced to concede that there is a difference between its view of the facts and the Fifth Circuit's view of the facts. As the United States readily notes, the statements contained in the allegations are treated "as *implicit* representations that SIB would invest the proceeds of the CD sales in securities listed on a regulated national exchange." U.S. Br. 21 (emphasis added). The United States concedes that "[t]he misrepresentations that petitioners are alleged to have made did not refer specifically to securities listed on a regulated national exchange." U.S. Br. 21. Further, the United States concedes that the U.S. Supreme Court will be "ultimately" required "to draw that inference" because of the lack of any specific reference to nationally registered securities. U.S. Br. 21. This analysis recognizes that the grant of the writ application by this Court would require the Court to review the factual determinations by the Fifth Circuit that "[t]he CDs were marketed with some vague references to SIB's portfolio containing instruments that might be SLUSA-covered securities seems tangential to the schemes advanced by the SEI

and Willis Defendants." *Roland v. Green*, 675 F.3d 503, 522 (5th Cir. 2012).

Another example of the factual determinations by the Fifth Circuit that the United States contests relates to how Stanford International Bank ("SIB") could pay high rates of return. Without support, the United States argues "that only assertions about covered securities would have answered investors' question about how SIB would be able to deliver the promised high returns on the CDs." U.S. Br. 11. At best, this is a highly speculative hypothesis made by the United States that is unsupported by the record. It is equally plausible that the Fifth Circuit's view is correct and that the other representations by SIB were the basis for the fraud and SIB's putative investment in low-risk blue-chip securities would logically tend to negate rather than to bolster the availability of higher-than-average returns.

The United States ignores the factual analysis performed by the Fifth Circuit on the total fraud committed by Allen Stanford and the relative unimportance of the sale or purchase of covered securities to determine that such purchase or sale was not more than "tangentially related" to the fraud. The Fifth Circuit reviewed the facts of this case as shown by numerous prior appeals from the Stanford Ponzi scheme proceedings and was uniquely qualified to determine the overall scope of the Ponzi scheme and the unimportance of covered securities to the overall fraud committed.[4]

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[4] The factual issues relating to the scope and elements of the Stanford Ponzi scheme have been the subject of multiple appeals to the Fifth Circuit. *See S.E.C. v. Stanford Intern. Bank Ltd.*, 424 F.App'x 338 (5th Cir. 2011); *Janvey v. Alguire*, 628

In *Roland*, the Fifth Circuit made a largely factual determination the fraud "in connection with the covered security" was not "more than tangentially related" to the multiple other elements of Allen Stanford's Ponzi scheme. Given the number of cases that have arisen out of the Stanford Ponzi scheme and have been reviewed by the Fifth Circuit, the court looked "beyond the face of the amended complaints to determine whether they allege securities fraud in connection with the purchase or sale of covered securities." *Roland*, 675 F.3d at 520. As the Fifth Circuit noted, "[c]ourts may look to—they must look to—the substance of a complaint's allegations in applying SLUSA. Otherwise, SLUSA enforcement would [be] reduce[d] to a formalistic search through the pages of the complaint for magic words . . . and nothing more." *Roland*, 675 F.3d at 520-521, *citing Segal v. Fifth Third Bank, N.A.*, 581 F.3d 305, 310 (6th Cir. 2009). The Fifth Circuit based the scope of its inquiry on explicit instructions of the Supreme Court that "the statute must not be construed so broadly as to convert every common-law fraud that *happens to involve [covered] securities* into a violation of § 10(b)." *S.E.C. v. Zandford*, 535 U.S. 813, 820 (2002) (emphasis added).

F.3d 164, 168 (5th Cir. 2010); *Janvey v. Adams*, 588 F.3d 831 (5th Cir. 2009); *Pendergest-Holt v. Certain Underwriters at Lloyd's of London*, 600 F.3d 562, 567 (5th Cir. 2010); *Janvey v. Alguire*, 647 F.3d 585, 591 (5th Cir. 2011); *Janvey v. Democratic Senatorial Campaign Committee, Inc.*, 699 F.3d 848 (5th Cir. 2012); *Janvey v. Libyan Inv. Authority*, 478 F.App'x 233 (5th Cir. 2012); *S.E.C. v. Stanford Intern. Bank Ltd.*, 465 F.App'x 316 (5th Cir. 2012).

The Fifth Circuit determined that "When we look over the complaints against the SEI Defendants and the Willis Defendants, we find that the heart, crux, and gravamen of their allegedly fraudulent scheme was representing to the Appellants that the CDs were a 'safe and secure' investment that was preferable to other investments for many reasons." *Roland*, 675 F.3d at 522. The Fifth Circuit looked at all of the allegations of the complaint and "beyond the facts of the amended complaint" to make a factual determination that the allegations of fraud were not more than tangentially related to a covered security. The United States even acknowledges that "[t]he Fifth Circuit's analysis of the 'host of (mis)representations' before it was undertaken in the course of ascertaining whether the 'in connection with' requirement was met at all—that is whether the alleged fraud was sufficiently connected to the purchase or sale of covered securities." U.S. Br. 17.

Thus, if the Court were to grant this writ application, then the Court would be required to perform a factual analysis to determine the effect of the "implicit representations" and to "draw that inference" that is different than the inference drawn by the Fifth Circuit, *i.e.*, a reversal of the factual determination of the Fifth Circuit as to what is more than "tangentially related" to the fraud. Thus, the United States implicitly recognizes this and recommends the denial of the writ application, despite its belief that the Fifth Circuit made an "erroneous factual analysis." The conclusion by the United States that the petition should be denied is correct.

III. THE JURISDICTIONAL ANALYSIS IS IN ERROR.

The *Roland* Plaintiffs in their initial opposition set forth in detail, based upon this Court's decision in *Kircher v. Putnam Funds Trust*, 547 U.S. 633 (2006), why this Court has no jurisdiction on this appeal because the case has been remanded to the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana. The United States, at footnote 6 of its brief, has disagreed with the *Roland* Plaintiffs and has argued that this Honorable Court does have jurisdiction to review the remand order based upon the case of *Aetna Cas. & Sur. Co. v. Flowers*, 330 U.S. 464, 466-467 (1947).

This is in error for two reasons. First, the writ applicants fail to acknowledge or analyze the effect of the enactment of 28 U.S.C. §1447(d) after *Flowers*, which limits appeals of remand orders to very specific circumstances, none of which are present here. Secondly, the writ applicants fail to acknowledge two decisions of this Court finding that the Court does not have the jurisdiction to review remand orders based on lack of jurisdiction, such as here. *Volvo of America Corporation v. Schwarzer*, 429 U.S. 1331, 1332-1333 (1976); *Metropolitan Casualty Ins. Co. v. Stevens*, 312 U.S. 563, 569 (1941).

Currently, under 28 U.S.C. §1447(d), a case remanded to state court cannot be reviewed "by appeal or otherwise." The specific language of the statute is the following:

> (d) An order remanding a case to the State court from which it was removed is not reviewable **on appeal or otherwise**, except that an order remanding a case to the State court from which

> it was removed pursuant to section 1442 or 1443 of this title shall be reviewable by appeal or otherwise.

(Emphasis added).

In SEI's reply to *Roland*'s writ opposition, as adopted by the United States, SEI argued the Supreme Court had jurisdiction to grant writs in *Roland*, relying on the cases of *Aetna Cas. & Sur. Co. v. Flowers*, 330 U.S. 464, and *Gay v. Ruff*, 292 U.S. 25 (1934). The United States fails to recognize that these cases rely on a prior version of the removal/remand statute, specifically 28 U.S.C. §71 (1940) (current version at 28 U.S.C. §1447 (2006)), which stated the following in pertinent part:

> . . . Whenever any cause shall be removed from any State court into any district court and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, such remand shall be immediately carried into execution, and no appeal from the decision of the district court so remanding such cause shall be allowed. . .

Comparing this statute with the current removal/remand statute, 28 U.S.C. §1447(d), which was adopted in 1964, shows two glaring differences, as follows:

1. The prior law, §71, only applied to district court rulings of remand. The current law, §1447(d), does not have this limit.
2. The prior law, §71, only prevented an "appeal" of a district court's order of remand, while the new law, §1447(d), prevents review by "appeal or otherwise."

What is plain to see is that Congress intended, by passage of 28 U.S.C. §1447(d), to expand the limits on review of remand orders by superior courts, by (1.) deleting the limitation of review to only district courts, and (2.) expanding the methods of review from "appeal" to "appeal or otherwise." As such, there is a clear statutory directive that remand orders are final and not to be disturbed by any superior court.

This very principle has been recognized by the Court in two cases. In *Metropolitan Casualty,* the Court was asked to review a state court default judgment which had issued after the case was remanded by a federal district court to state court. The issue was whether the remand order was improvidently granted. The Court disagreed with the claim that the Court had the right to review the remand order, plainly stating that "we are not at liberty to review the remand order." *Metropolitan Casualty*, 312 U.S. at 569.

Similarly, in *Volvo of America*, the Court was asked to issue a stay of a remand order granted by a federal district court, claiming the remand order could be reviewed via a writ of mandamus to the Court. The Court disagreed, holding that a remand order finding lack of jurisdiction, such as the case at bar, cannot be reviewed by the Court. *Volvo of America Corporation*, 429 U.S. at 1332-1333. The same result should apply here.

CONCLUSION

This Court should deny the petition for a writ of certiorari.

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INTRODUCTION

The Troice respondents agree with the United States that the decision below presents no question worthy of this Court's review. They also concur in the government's belief that the analytical test employed by the Fifth Circuit in this case is faithful to this Court's SLUSA jurisprudence, is consistent with the approach of other circuits, and correctly construes the "in connection with" requirement under SLUSA. They respectfully disagree, however, with the United States' assertion that the Fifth Circuit's application of the law to the facts produced an erroneous outcome in this case, and offer this supplemental brief to articulate the grounds for that disagreement.

REASONS FOR DENYING THE PETITION

I. THERE WAS NO PURCHASE OR SALE OF A COVERED SECURITY.

The government's merits argument proceeds directly to the "in connection with" requirement. U.S. Brief at 10. It thus overlooks a fundamental threshold question: whether there was a purchase or sale of a covered security. For SLUSA does not apply to alleged misrepresentations "in connection with a covered security," but only to alleged misrepresentations "in connection with *the purchase or sale of* a covered security." 15 U.S.C. § 78bb(f)(1)(A) (emphasis supplied).

This case is unique in SLUSA jurisprudence in that no one involved in it – neither the petitioners nor the respondents nor SIB nor anyone else – purchased or sold a covered security, or contracted to do so. The certificates of deposit purchased by the respondents are universally acknowledged *not* to have been covered securities. And SIB did not purchase or sell covered securities: the complaints allege that it instead invested in speculative Antiguan real estate and squandered its money on the lavish lifestyle of Allen Stanford.

There are, to be sure, several SLUSA and § 10(b) cases applying those statutes in the absence of an actual purchase or sale. *See, e.g.*, *SEC v. Zandford*, 535 U.S. 813, 819 (2002) (dictum: § 10(b) violated where broker accepts payment for securities that he never intends to deliver); *Grippo v. Perazzo*, 357 F.3d 1218 (11th Cir. 2004) (same under state statute *in pari materia* with § 10(b)).[1] The petitioners take these cases to mean that the statutes apply indiscriminately to non-purchases and non-sales as well as to purchases and sales.

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[1] *See also Scala v. Citicorp Inc.*, No. C 10-03859 CRB, 2011 U.S. Dist. LEXIS 30871 (N.D. Cal. Mar. 15, 2011); *Newman v. Family Management Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010); *Barron v. Igolnikov*, No. 09 Civ. 4471 (TPG), 2010 U.S. Dist. LEXIS 22267, *11 (S.D.N.Y. Mar. 10, 2010); *Schnorr v. Schubert*, No. CIV-05-303-M, 2005 U.S. Dist. LEXIS 45757, *18-23 (W.D. Okla. Aug. 18, 2005).

But they do not. As explained in *Falkowski v. Imation Corp.*, 309 F.3d 1123, 1129 (9th Cir. 2002), the rationale behind the cases is not that the "purchase or sale" requirement may be casually disregarded, but rather that it is satisfied by an unconsummated contract for purchase or sale. That is because the 1933 and 1934 Acts define purchases and sales to include contracts to purchase or sell. *See* 15 U.S.C. §§ 77b(a)(3), 78c(a)(13)-(14). Thus the correct rule is not that SLUSA applies to all non-purchases and non-sales of covered securities, but that it applies to misrepresentations in connection with contracts to purchase or sell covered securities, whether such contracts remain unconsummated or are consummated through an actual purchase or sale.

Here, SIB did not contract with the respondents (or anyone else) to purchase or sell covered securities. It instead fraudulently misrepresented an existing fact, namely the contents of its investment portfolio, to induce a transaction in uncovered securities through which the respondents placed time deposits with SIB. The respondents did not acquire or contract to acquire any ownership or security interest in SIB's portfolio. As the government noted, "the fraud had no prospect of affecting the market in [covered] securities." U.S. Brief at 12. These facts amply distinguish this case from SLUSA-precluded cases involving contracts to purchase or sell covered securities.

Thus the Fifth Circuit correctly rejected the application of SLUSA in this case, because there was no purchase or sale of a covered security with which

any misrepresentation could be connected or not connected.

II. THE MISREPRESENTATIONS WERE NOT "IN CONNECTION WITH" THE PURCHASE OR SALE OF A COVERED SECURITY.

The government reasons that, among SIB's many misrepresentations, the one regarding the contents of its investment portfolio was the most salient, because it addressed the means by which SIB could pay high returns on the CDs while maintaining the safety of the respondents' investment. U.S. Brief at 10-11.

That conclusion is questionable. SIB's putative investment in low-risk blue-chip securities would logically tend to negate rather than to bolster the availability of higher-than-average returns. And while that misrepresentation would tend to establish that SIB was financially solid and the CD purchasers' investment was safe, many of SIB's other misrepresentations would do so even more directly. These include its misrepresentations about regulation of SIB by the United States and Antiguan governments, verification of value by independent auditors, regular outside stringent risk management evaluations, and insurance through Lloyds, all of which are directly related to the safety of an investment in SIB.

In any event, there is a more fundamental reason why SIB's misrepresentation about its portfolio was not "in connection with" the purchase or sale of a covered security: no actual or putative buyer or seller

of a covered security was ever deceived. Although this Court held in *Dabit*[2] that SLUSA applies even when the plaintiff is not the deceived party in a covered securities transaction, it did not hold that a deceptive transaction in covered securities is unnecessary.

In *Dabit*, the defendant's manipulation of stock prices necessarily deceived buyers and sellers in actual market transactions. It mattered not that the plaintiff was a holder rather than one of those buyers or sellers, but instead sufficed that his harm resulted from deceptive transactions in covered securities.[3] But it would stretch "in connection with" beyond the breaking point to hold that a misrepresentation is connected with a covered securities transaction in which *no one* was deceived.

An overexpansive application of the phrase "in connection with" in SLUSA would lead to an overexpansive application of the same phrase in § 10(b), because the two statutes are *in pari materia* on this point. *See Dabit*, 547 U.S. at 85-86. In particular, application of SLUSA in this case, where the only fraud was in an uncovered transaction, would imply that § 10(b) should be applied even in cases where the only fraud is in a non-securities transaction. This

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[2] *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006).

[3] *See also U.S. Mortgage, Inc. v. Saxton*, 494 F.3d 833, 844-45 (9th Cir. 2007); *Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294 (3d Cir. 2004).

would set at naught this Court's holding that the "in connection with" requirement "must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of § 10(b)." *Zandford*, 535 U.S. at 820, *quoted in* U.S. Brief at 9. The Fifth Circuit correctly concluded that Congress did not intend SLUSA (and, concomitantly, § 10(b)) to stretch that far.

III. WHETHER SIB'S NONEXISTENT PORTFOLIO CONTAINED COVERED SECURITIES IS A MATTER OF SPECULATION.

The government acknowledges that SIB's misrepresentations about its portfolio did not refer specifically to securities listed on a regulated national exchange. U.S. Brief at 21. It is nevertheless willing to *assume* that the non-existent "well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies and major international banks" touted by SIB contained covered securities. *Id.*

This approach is at best speculative and at worst counter-factual. A covered security is a security traded on certain national stock exchanges[4] or a

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[4] These are: the New York Stock Exchange; the American Stock Exchange; the three tiers of the NASDAQ market; the NYSE Arca; the Philadelphia Stock Exchange; the Chicago Board Options Exchange; and the International Securities Exchange options listings. 15 U.S.C. § 77r(b)(1)(A); 17 C.F.R. § 230.146(b)(1).

security senior to a security traded on those exchanges. 15 U.S.C. §§ 77p(f)(3), 77r(b)(1). This generally does not include securities issued by stable national governments. While it does include securities issued by some strong multinational companies and major international banks, it is a matter of speculation whether securities acquired by an Antiguan bank would typically be traded on an American national stock exchange or on an exchange in Europe, the Far East, or elsewhere.

This is an inherent problem in attempting to apply SLUSA to an imaginary portfolio of nonexistent securities. Where a SLUSA case involves a purchase of, a sale of, or a contract to purchase or sell a security, the actual transaction or contract identifies the security, and the "covered security" question is simple and non-speculative. In contrast, where there is no purchase, sale, or contract, the question of what was *not* purchased, sold, or contracted for is almost always speculative.[5]

In any event, the Fifth Circuit did not reach this issue, holding only that "vague references to SIB's portfolio containing instruments that *might be* SLUSA-covered securities" were tangential to the petitioners' misrepresentations. App. 37a (emphasis

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[5] The speculation is enhanced by the so-called "Delaware carve-out," under which SLUSA does not apply to certain actions based upon the law of the state of organization of the issuer. *See* 15 U.S.C. § 78bb(f)(3)(A). If the identity of the issuer is unknown, so is the applicability of the carve-out.

supplied). Had it reached the issue, the respondents submit that the court would have been obliged to hold that "might be" is not enough to trigger SLUSA preclusion.

CONCLUSION

For all the reasons set forth in the original briefs in opposition and in the United States' brief, a writ of certiorari should be denied. In considering that question, the Court should, for the reasons set forth in the original briefs in opposition and this supplemental brief, treat the decision below as correct in its application of the legal standards governing SLUSA preclusion to the unique facts of this case.

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December 24, 2012

SUPPLEMENTAL BRIEF

No. 12-86

In the Supreme Court of the United States

WILLIS OF COLORADO INC.; WILLIS GROUP HOLDINGS LIMITED; WILLIS LIMITED; BOWEN, MICLETTE & BRITT, INC.; and SEI INVESTMENTS COMPANY

Petitioners,

v.

SAMUEL TROICE, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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PETITIONERS' SUPPLEMENTAL BRIEF

The United States correctly concludes that the Fifth Circuit erred by finding that SLUSA does not preclude Respondents' claims. Although the Fifth Circuit recognized that Respondents allege misrepresentations about SLUSA-covered securities, the court refused to find SLUSA preclusion because Respondents also allege several misrepresentations regarding other matters not related to covered securities. The United States correctly concludes that the Fifth Circuit was wrong in this regard because the allegations regarding covered securities, by themselves, require SLUSA preclusion.

Elaborate Ponzi schemes, by their nature, require misrepresentations about multiple matters. The fact that misrepresentations about covered securities do not stand alone cannot be a reason to find SLUSA inapplicable. Whatever the precise outer boundaries of SLUSA's "in connection with" requirement, a misrepresentation *about* covered securities is clearly covered, and the Fifth Circuit's decision to find SLUSA inapplicable despite acknowledging such a misrepresentation is indefensible.

Despite the Fifth Circuit's clear error, the United States urges this Court to deny certiorari, arguing that there is no real split of authority over the meaning of SLUSA's "in connection with" requirement. In this regard, the United States argues that the Fifth Circuit's error was not with the test it adopted to analyze the "in connection with" requirement (which it says is not in conflict with the tests adopted by other circuits), but rather with how it applied that test to the facts of this case. But the

United States fails to recognize that it is the Fifth Circuit's test itself that allows for other matters to be considered, even when the fraud at issue involves a misrepresentation about a covered security. In other words, this is not just misapplying law to fact, but adopting a *test* that is squarely in conflict with other circuits because it allows a plaintiff to avoid SLUSA preclusion by merely including alleged misrepresentations about other matters.

The varying formulations of the split are not just semantic differences; they are fundamental methodological differences that will be outcome determinative in many cases, including this one. Consistent with SLUSA's plain text, the Second, Sixth, and Eleventh Circuits have made clear that *one* misrepresentation regarding a covered securities transaction is sufficient to trigger preclusion. In contrast, the Fifth Circuit—applying its own variation of the Ninth Circuit's "more than tangential" standard—has held that one SLUSA-covered misrepresentation is not necessarily sufficient, and that a complaint can be saved from preclusion if the plaintiffs also alleged misrepresentations regarding other matters.

The split is well illustrated by the fact that courts within the Second Circuit have found claims arising out of the Madoff Ponzi scheme to be precluded by SLUSA. Those cases—inexplicably ignored by the United States—are identical to this one in all relevant respects, as they involved a fraudster who recruited new investors by promising, falsely, that invested funds would earn highly attractive returns while being backed by publicly traded securities. And both the Stanford and Madoff schemes have

spawned massive litigation against third parties who are alleged to have participated in the fraud in some tangential way. Yet Madoff-related claims brought in New York and Connecticut courts are precluded by SLUSA, while Stanford-related claims brought in Texas and Louisiana are not. It makes no sense to have the two largest Ponzi schemes in United States history be treated radically differently based on the happenstance of the circuit in which they arose.

As the Madoff cases make clear, there is no question that this case would have been decided differently under the Second Circuit's test (and the Eleventh Circuit's very similar standard). Indeed, the district court applied the Eleventh Circuit's test and found Respondents' claims to be precluded, while the Fifth Circuit rejected that standard and held that SLUSA does not apply here. It is hard to imagine a clearer indication that the split is real—and not semantic—than the fact that the choice of test was outcome determinative in the two courts that have heard the case.

The United States also argues that the leading cases from the Second and Eleventh Circuits are distinguishable because the fraud in those cases caused the plaintiffs to purchase SLUSA-covered securities, while the fraud in this case caused the plaintiffs to purchase CDs (which are not covered securities). But that factual difference is not legally relevant. If a misrepresentation about a covered security causes someone to part with their money, then SLUSA applies without regard to whether the victim thought they were buying a covered security, a CD backed by covered securities, or something else. Indeed, the fundamental problem in the most

egregious Ponzi schemes is that the thing the victim thinks he is purchasing does not even exist. As SLUSA itself makes clear, it simply makes no sense to have the initial coverage of the securities laws or SLUSA preclusion turn on what the victim is induced to purchase. SLUSA requires only that the *misrepresentation* be "in connection with" a covered security, and a misrepresentation *about* a covered security clearly satisfies that requirement.

In sum, the split is real and the choice of legal standard is outcome determinative in this case. This Court should grant certiorari to resolve this conflict and correct the Fifth Circuit's demonstrably erroneous interpretation of SLUSA.

I. THE UNITED STATES CORRECTLY ACKNOWLEDGES THAT THE FIFTH CIRCUIT'S DECISION WAS WRONG

A. The United States (at 10-13) correctly identifies the flaws of the Fifth Circuit's decision. The "crux" of the Stanford fraud was the promise that SIB CDs were safe, liquid investments that would deliver high returns. U.S. Br. 10. As the United States explains, the representation that the CDs were backed by a diversified portfolio of covered securities was "important to the success of that tactic." *Id.* Indeed, Stanford's scheme could not have succeeded *without* this misrepresentation because "[t]here was no other apparent source of the funds necessary to make the CDs function . . . and to allow the investors to realize the financial benefits they had been promised." *Id.*

The Fifth Circuit refused to apply SLUSA because it concluded that these misrepresentations

about covered securities were rendered "tangential" by *other* alleged misrepresentations that did not involve covered securities. Pet.App.37-39. As the United States explains, that holding was clearly wrong. It is true that the other alleged misrepresentations "[could] have been relevant to a prospective purchaser," but "only the assertions about covered securities would have answered investors' questions about *how* SIB would be able to deliver the promised high returns on the CDs—questions that any reasonable investor would have asked before buying a financial instrument from a foreign bank." U.S. Br. 11.

In sum, the misrepresentations about covered securities were "crucial to the Stanford fraud," and were "sufficient to trigger SLUSA preclusion." *Id.* at 12-13; *see* Pet. 18-23; Pet. Reply 8-10. The United States correctly acknowledges that the Fifth Circuit's decision was wrong because it failed to recognize the significance of the misrepresentations about covered securities in this case.[1] However, as discussed below, the United States fails to recognize that the Fifth Circuit's test is inconsistent with SLUSA and conflicts with other circuits' tests because it allows for other alleged misrepresentations to prevent SLUSA preclusion even when there is unquestionably a misrepresentation about a covered security.

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[1] The United States also agrees with Petitioners that "there is no jurisdictional bar to this Court's consideration of the case." U.S. Br. 20 n.6; *see* Pet. Reply 10-13.

II. There Is a Bona Fide Split of Authority over the Meaning of SLUSA's "in Connection With" Requirement That Warrants this Court's Review

Although it recognizes the serious flaws in the Fifth Circuit's analysis, the United States nonetheless argues that this Court should deny certiorari. The government's effort to deny a circuit split is unpersuasive, as the split is demonstrably outcome determinative.

A. The United States' primary argument is that there is no real split of authority over the meaning of SLUSA's "in connection with" requirement, and that the test adopted by the Fifth Circuit is not in conflict with other circuits' tests. But the fundamental problem with the Fifth Circuit's approach—and the fundamental conflict with other circuits—is that the Fifth Circuit holds that a misrepresentation about covered securities is not sufficient if other alleged misrepresentations render it too *tangential* to the fraudulent scheme. Pet.App.33-34. This is in direct conflict with other circuits that have held—consistent with SLUSA's plain text—that the existence of *one* covered misrepresentation is sufficient to trigger preclusion, regardless of whether the complaint also alleges misrepresentations about other matters. As the Sixth Circuit has explained, SLUSA "does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentations in connection with buying or selling securities." *Segal v. Fifth Third Bank*, 581 F.3d 305, 311 (6th Cir. 2009). Instead, it asks only "whether the complaint includes these types of allegations, pure and simple." *Id.*

Here, the Fifth Circuit acknowledged a misrepresentation about covered securities, but then went on to parse the rest of the complaint to determine whether the covered misrepresentation was too tangential or extraneous to give rise to preclusion. This is not just a different formulation of the same test; it is an entirely different (and entirely misguided) *methodology* for determining when SLUSA applies.

B. The Fifth Circuit's approach to SLUSA squarely conflicts with the approach of the Second and Eleventh Circuits. Pet. 23-26; Pet. Reply 3-6. The Eleventh Circuit asks whether the plaintiffs' claims are premised on either: (1) fraud that "induced" the plaintiffs to invest with the defendants; or (2) a fraudulent scheme that "coincided and depended upon" the purchase or sale of SLUSA-covered securities. *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1349 (11th Cir. 2008) ("*IPM*")). The Second Circuit's test similarly asks whether the complaint "necessarily" alleges, involves, or rests on misrepresentations regarding SLUSA-covered securities. *Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010).

And, not only is the Fifth Circuit's test entirely different from the Eleventh and Second Circuits' tests, the procedural history of this case makes clear that it is outcome determinative. The district court applied the Eleventh Circuit's test and found the claims precluded. Pet.App.65-67. The Fifth Circuit applied its novel variation of the Ninth Circuit's test and found them not precluded. Pet.App.31-38. Accordingly, the United States' suggestion (at 19-20)

that any tension among the circuits is more semantic than real is simply incorrect.

It is clear that this case would have come out differently in the Second and Eleventh Circuits. There is no question that the plaintiffs' purchases of SIB CDs were *induced* by misrepresentations about covered securities, and that the Stanford Ponzi scheme rested on such misrepresentations. Pet.App.66-67. As the United States concedes, the misrepresentation that depositors' funds were being invested in covered securities was "crucial to the Stanford fraud." U.S. Br. 12; *see* Pet.App.36-37 (misrepresentations about covered securities were intended to "lure" Respondents into "buying the worthless CDs").

The United States nonetheless attempts to distinguish *IPM* (11th Circuit) and *Romano* (2nd Circuit) on the ground that those cases involved fraudulent schemes to induce investors to purchase covered securities, while the CDs at the heart of the Stanford fraud were uncovered securities. U.S. Br. 13-17. But that is a factual distinction without a legal difference. The text of SLUSA requires only that the *misrepresentation* be "in connection with" a covered security. 15 U.S.C. § 78bb(f)(1). It makes no difference whether the misrepresentation about a covered security induces someone to buy a covered security, a CD backed by such securities, or something else. The United States itself makes this point elsewhere in its brief, noting that SLUSA should have applied here even though "Stanford and SIB did not seek to induce investors to purchase covered securities." U.S. Br. 12.

SLUSA focuses on what the misrepresentation is about (covered securities), not on what the fraudster uses the misrepresentation to sell. SLUSA's focus on the misrepresentation is particularly important for Ponzi schemes where the thing the fraudster purports to sell—be it covered securities, CDs backed by securities, or something else—may not even exist. Indeed, courts applying the Second Circuit's test in Madoff cases have rejected the government's precise factual distinction as legally irrelevant. As one court explained, "[m]isrepresentations related to non-covered limited partnership interests may be nonetheless 'in connection with' covered securities where the Funds were created for the purpose of investing in such securities, and the misrepresentations 'had the effect of facilitating [the] fraud.'" *Newman v. Family Management Corp.*, 748 F. Supp. 2d 299, 312 (S.D.N.Y. 2010) (citation omitted).

That is precisely the case here. Even though the SIB CDs were not themselves covered securities, they were marketed to investors based on the false promise that deposited funds would be backed by SLUSA-covered securities. That allegation would have been more than sufficient to trigger SLUSA preclusion under the standards applied by the Second and Eleventh Circuits.

C. The split of authority is dramatically illustrated by the differential treatment of the two largest Ponzi schemes in United States history. While courts applying the Second Circuit's test have found efforts to sue remote parties in the Madoff cases SLUSA-precluded, the Fifth Circuit—applying its own misguided test—has allowed such suits to

proceed. But despite Petitioners' reliance on these Madoff-related precedents, *see* Pet. 27-28 & n.11; Pet. Reply 5-6, the United States simply ignores these cases and the split they reflect.

The multi-billion dollar Madoff and Stanford frauds are analytically identical: in both cases, the fraudsters recruited new investors through false representations that their funds would earn above-market returns with limited risk because investments were in or backed by SLUSA-covered securities. Stanford sold his CDs by asserting that they were backed by covered securities, while Madoff lured investors by promising that he would purchase covered securities for the benefit of funds in which plaintiffs invested. *See In re Herald, Primeo & Thelma*, 2011 WL 5928952, at *8 (S.D.N.Y. Nov. 29, 2011); Pet.App.67-68 n.12.

Despite these similarities, courts have taken starkly different approaches in applying SLUSA to these two Ponzi schemes. Claims against third parties arising out of the Madoff fraud that were brought in New York or Connecticut are precluded, *see* Pet. 27-28 & n.11, while Stanford-related claims against third parties that were brought in Texas or Louisiana are not. That stark difference makes no sense (especially since litigation arising out of the two schemes is likely to persist for years to come—and to target deep-pocketed defendants far removed from the actual fraud) and underscores the split of authority between the Second and Fifth Circuits.

The plethora of Madoff-related litigation also squarely refutes the government's suggestion (at 20 n.7) that the facts of this case are "unusual" and

unlikely to recur. This supposedly rare fact pattern has now recurred twice within the last few years, in the two largest Ponzi schemes in U.S. history, each of which involved billions of dollars, thousands of victims, and massive litigation after the frauds were detected. As long as fraudsters promise above-market returns for investments backed with covered securities these issues will continue to recur.

The United States is also wrong to suggest (at 13, 16) that this case is unique because it involves a "multi-layered transaction." First, there is nothing unique about the multiple layers at issue in the Stanford Ponzi scheme. Multiple "layers" are also present in the Madoff Ponzi scheme. Indeed, successful Ponzi schemes tend to be complicated, multi-layered, and supported by multiple misrepresentations. Second, and most important, the number of "layers" is irrelevant. What is relevant is whether a misrepresentation about covered securities is at play, as that is what triggers the application of the securities laws generally and SLUSA preclusion in particular.

D. Finally, the United States suggests (at 18-19) that the Fifth Circuit did not adopt a special rule treating aiders and abettors differently for SLUSA purposes, but rather simply applied its mistaken inquiry into whether any alleged misrepresentations about covered securities were "too tangential" to all defendants, including those who made no direct misrepresentations to investors about covered securities. Petitioners do not disagree—which is why we present only a single question. While the difference between primary and secondary liability matters for liability under Section 10(b)(5), it should

not make any direct difference for purposes of SLUSA preclusion. All that is required for SLUSA preclusion is a misrepresentation by someone about a covered security as part of the scheme alleged to be the basis for the defendant's liability.[2]

That said, one of the many defects of the Fifth Circuit's approach is that by asking whether the misrepresentation about a covered security was only tangential when weighed against the other allegations in the complaint, the decision makes it easier to ensnare aiders and abettors (secondary actors). Pet. 28-32. To even explain why those secondary actors are liable, plaintiffs will necessarily have to make additional allegations about why the secondary actors have any business being defendants when they did not themselves make the misrepresentations about covered securities. Thus, the critical misrepresentation about covered securities may seem more tangential in cases against actors far-removed from that misrepresentation, even though none of that matters for SLUSA purposes.

Respondents' lawyers boasted they had found a path around both SLUSA and *Stoneridge v. Scientific-Atlanta*, 552 U.S. 148 (2008). Pet. 32. Now that the United States has recognized that the

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[2] Although it is not critical for SLUSA preclusion purposes, it should be noted that, contrary to the United States' suggestion (at 5), Willis is not alleged to have made a misrepresentation about covered securities directly to investors. Instead, it is only alleged to have made a representation about insurance coverage. Pet. 11.

decision below is wrong, this Court should grant plenary review and make clear there is no means to circumvent SLUSA or this Court's precedents. An alleged misrepresentation about a covered security is sufficient to bring a complaint squarely within SLUSA.

CONCLUSION

The Court should grant the petition.

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December 26, 2012

AMICUS CURIAE BRIEF

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In the Supreme Court of the United States

CHADBOURNE & PARKE LLP, PETITIONER

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SAMUEL TROICE, ET AL.

WILLIS OF COLORADO INCORPORATED, ET AL., PETITIONERS

v.

SAMUEL TROICE, ET AL.

PROSKAUER ROSE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

The Securities Litigation Uniform Standards Act of 1998 (SLUSA) precludes most state-law class actions in which the plaintiffs allege misrepresentations "in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A). The term "covered security" encompasses, *inter alia*, securities listed on a regulated national exchange. See 15 U.S.C. 77r(b) (2006 & Supp. V 2011), as amended by Pub. L. No. 112-106, §§ 305(a), 401(b), 126 Stat. 322, 325; 15 U.S.C. 78bb(f)(5)(E). The question presented is as follows:

Whether SLUSA precludes a class action alleging that plaintiffs purchased uncovered securities in reliance on misrepresentations that those securities were backed by investments in covered securities.

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1 *McLaughlin on Class Actions: Law and Practice* (9th ed. 2012) 20
3 Restatement (Second) of Torts (1977) 22

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In the Supreme Court of the United States

No. 12-79

CHADBOURNE & PARKE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

No. 12-86

WILLIS OF COLORADO INCORPORATED, ET AL., PETITIONERS

v.

SAMUEL TROICE, ET AL.

No. 12-88

PROSKAUER ROSE LLP, PETITIONER

v.

SAMUEL TROICE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

INTEREST OF THE UNITED STATES

The United States, through the Department of Justice and the Securities and Exchange Commission (SEC or Commission), administers and enforces the federal

securities laws. These consolidated cases involve the construction of the Securities Litigation Uniform Standards Act of 1998 (SLUSA), Pub. L. No. 105-353, 112 Stat. 3227, which precludes certain class actions that are based on state law and "alleg[e] * * * a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1); see 15 U.S.C. 77p(b). In *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71 (2006), this Court held that the relevant language in SLUSA was borrowed from, and should be interpreted consistently with, similar language in Section 10(b) of the Securities Exchange Act of 1934 (1934 Act), 15 U.S.C. 78j(b), and Rule 10b-5, 17 C.F.R. 240.10b-5.[1] Accordingly, the United States has a substantial interest in the resolution of the question presented. At the Court's invitation, the United States filed a brief at the petition stage of these cases.

STATEMENT

1. Section 10(b) of the 1934 Act makes it unlawful to "use or employ, in connection with the purchase or sale of any security * * * , any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [Securities and Exchange] Commission may prescribe." 15 U.S.C. 78j(b). The SEC adopted Rule 10b-5 to implement Section 10(b). Rule 10b-5 declares it unlawful, "in connection with the purchase or sale of any security," to "employ any device, scheme, or

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[1] "SLUSA amends the [Securities Act of 1933] and the [1934 Act] in substantially identical ways." *Dabit*, 547 U.S. at 82 n.6. Citations to SLUSA in this brief are generally to 15 U.S.C. 78bb(f), which amended the 1934 Act.

artifice to defraud"; to "make any untrue statement of a material fact or * * * omit to state a material fact necessary in order to make the statements made * * * not misleading"; or to "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." 17 C.F.R. 240.10b-5.

The Commission may bring a civil enforcement action against "any person" who has "violated any provision of [the 1934 Act]" or "the rules or regulations thereunder." 15 U.S.C. 78u(d)(3)(A); see 15 U.S.C. 78u(d)(1). The United States may bring criminal prosecutions for willful violations. 15 U.S.C. 78ff(a). Section 10(b) also has been construed to afford an implied right of action to private parties, although this Court has placed various limitations on such private lawsuits. See, *e.g.*, *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994) (holding that private actions may not be brought for aiding and abetting); *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 725, 754-755 (1975) (holding that private actions may be brought only by purchasers or sellers of securities).

Prompted by concern that the salutary purposes of private securities litigation were being "undermined by * * * abusive and meritless suits," H.R. Conf. Rep. No. 369, 104th Cong., 1st Sess. 31 (1995) (1995 House Conf. Rep.), Congress enacted the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 Stat. 737. The PSLRA established numerous reforms—including heightened pleading standards, an automatic stay of discovery, and a safe harbor for forward-looking statements—that apply to securities-fraud actions brought under federal law. See 15 U.S.C. 78u-4(b) (2006 & Supp. V 2011); 15 U.S.C. 78u-5.

After the PSLRA was enacted, however, Congress observed a sharp increase in the number of securities-related class actions that alleged only state-law claims. In response to that development, Congress enacted SLUSA. The statute reflects Congress's view that the growing prevalence of state-law securities-fraud class actions had "prevented [the PSLRA] from fully achieving its objectives" of "prevent[ing] abuses in private securities fraud lawsuits." SLUSA § 2(1)-(3), 112 Stat. 3227; see *Dabit*, 547 U.S. at 82. Congress therefore found it "appropriate to enact national standards for securities class action lawsuits involving nationally traded securities, while preserving the appropriate enforcement powers of State securities regulators." SLUSA § 2(5), 112 Stat. 3227.

To that end, Congress directed that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging" either "a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security" or "any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A) and (B); see 15 U.S.C. 77p(b).[2] The term "covered class

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[2] SLUSA includes several exceptions to preclusion, none of which is at issue here. See 15 U.S.C. 78bb(f)(3) (exempting from preclusion a "covered class action * * * based upon the statutory or common law of the State in which the issuer is incorporated * * * or organized"; an action brought by a "class comprised solely of * * * States, political subdivisions, or State pension plans"; and an otherwise "covered class action" if it "seeks to enforce a contractual agreement between an issuer and an indenture trustee"); see also 15 U.S.C. 78bb(f)(4) (providing that the "securities commission (or any agency or office

action" includes a suit in which damages are sought on behalf of more than 50 people. 15 U.S.C. 78bb(f)(5)(B)(ii). The term "covered security" includes a security that was listed on a regulated United States national exchange and traded nationally "at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred." 15 U.S.C. 78bb(f)(5)(E); see 15 U.S.C. 77r(b) (2006 & Supp. V 2011), as amended by Pub. L. No. 112-106, §§ 305(a), 401(b), 126 Stat. 322, 325.

SLUSA's "preclusion provision" does not bar state-law claims entirely. *Kircher* v. *Putnam Funds Trust*, 547 U.S. 633, 636 n.1 (2006). Rather, it makes certain "claims nonactionable through the class-action device in federal as well as state court." *Ibid.* If a suit that falls within the scope of the preclusion provision is brought in state court, the action is "removable to the Federal district court for the district in which the action is pending," 15 U.S.C. 78bb(f)(2), where it is subject to dismissal.

2. a. This case arises from a multi-billion-dollar Ponzi scheme run by Allen Stanford and various entities that he controlled. Among those entities was Stanford International Bank (SIB), which was chartered in Antigua. SIB issued fixed-return certificates of deposit (CDs) that it falsely claimed were backed by safe, liquid investments. See Pet. App. 6a-7a, 37a.[3] In fact, the claimed investments did not exist, and "SIB had to use new CD sales proceeds to make interest and redemption

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performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions").

[3] All citations to "Pet. App." are to the appendix to the petition for a writ of certiorari in No. 12-79.

payments on pre-existing CDs." *Id.* at 6a (quoting *Janvey* v. *Alguire*, 647 F.3d 585, 590 (5th Cir. 2011)).[4]

Multiple suits alleging violations of state law were filed after the fraud was discovered. Two groups of Louisiana investors filed suits in state court in Baton Rouge against a number of Stanford-related companies, employees, and others (the SEI Defendants), alleging violations of Louisiana law. Pet. App. 7a. A different group of investors brought separate class actions in federal court against SIB's insurance brokers (the Willis Defendants) and SIB's lawyers (the Proskauer Defendants, which include petitioners Proskauer Rose LLP and Chadbourne & Parke LLP), alleging violations of Texas law. *Id.* at 9a-10a.

All of the complaints allege that, in luring the plaintiffs to purchase its CDs, SIB represented that the CDs were safe and secure because SIB invested the money it received "in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." Pet. App. 8a; see *id.* at 9a; see also J.A. 433, 444, 458, 480, 628. The complaints also allege that (1) persons making "marketing pitches to prospective investors" were trained to stress the "liquidity/marketability of SIB's invested assets" as the "most important factor to provide security to SIB clients," J.A. 444-445 (Proskauer Defendants); see J.A. 249, 253-254, 341, 345, 675 (SEI Defendants and Willis Defendants); (2) that plaintiffs "purchased participation interests in

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[4] The SEC brought an action alleging fraud with respect to the CDs (which are "securities" within the meaning of Section 10(b), though not "covered securities" within the meaning of SLUSA), and the United States prosecuted Stanford for fraud, conspiracy, and obstruction of justice. See Pet. App. 6a-7a.

* * * SIB's investment portfolio, just like any mutual or hedge fund," J.A. 442-443 (Proskauer Defendants); and (3) that plaintiffs "would not have purchased the SIB CDs" if they had "been aware of the truth" that SIB's "portfolio consisted primarily of illiquid investments or no investments at all," Pet. App. 12a-13a (SEI Defendants); see J.A. 480, 715 (alleging that statement that the "money was being invested in safe, liquid investments that were completely insured" was a "material misstatement") (Proskauer Defendants and Willis Defendants). The complaints additionally allege that SIB made a number of other misrepresentations about the security of the CDs, including that SIB was closely regulated, staffed by experienced professionals, and insured by Lloyd's of London. Pet. App. 8a-9a, 37a.

The SEI Defendants removed the Louisiana cases to federal court, and all of the actions were ultimately transferred to the Northern District of Texas. The district court dismissed the complaints as precluded under SLUSA. The court held that the CDs themselves are not "covered securities," see Pet. App. 60a-61a, but that the plaintiffs had nevertheless alleged misrepresentations "made in connection with transactions in covered securities," *id.* at 63a.[5]

The district court based that holding on two grounds. First, the court focused on SIB's alleged false representation that it invested its assets in "highly marketable securities issued by stable governments, strong multinational companies and major international banks." Pet. App. 64a. Noting "the prevalence of multinational com-

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[5] The district court's opinion analyzes whether SLUSA precludes the Louisiana actions. The court later issued separate orders dismissing the other suits for the reasons set forth in that opinion. See Pet. App. 8a, 10a, 13a.

panies on national stock exchanges," *id.* at 65a n.11, the court found that SIB had "led the Plaintiffs to believe that the SIB CDs were backed, at least in part, by SIB's investments in SLUSA-covered securities," *id.* at 64a-65a. The court concluded that preclusion is required when plaintiffs "premise[] their claims on * * * 'fraud that induced [the plaintiffs] to invest.'" *Id.* at 64a (quoting *Instituto de Prevision Militar* v. *Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) (alterations and omissions in original). Second, the court held that "[p]laintiffs' allegations * * * reasonably imply" that some investors had sold covered securities in order to obtain the money to purchase CDs. *Id.* at 67a. In the court's view, "SLUSA preclusion applies even if only a single plaintiff sold a single SLUSA-covered security" to finance such an "acquisition." *Id.* at 69a.

b. The court of appeals reversed. Pet. App. 1a-41a. The court stated that "a misrepresentation is 'in connection with' the purchase or sale of securities if there is a relationship in which the fraud and the stock sale coincide or are more than tangentially related." *Id.* at 32a (quoting *Madden* v. *Cowen & Co.*, 576 F.3d 957, 965-966 (9th Cir. 2009)) (emphasis omitted). Relying in part on "policy considerations," *id.* at 26a-29a, the court concluded that neither of the grounds for preclusion invoked by the district court satisfied that standard.

First, the court of appeals deemed the "references to SIB's portfolio being backed by 'covered securities' to be merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendants' fraud." Pet. App. 36a; see *id.* at 37a. In the court's view, the alleged misrepresentation about the nature of SIB's investments was only one of a "host of (mis)representations" that were intended to induce investors to purchase the CDs. See *id.* at 35a-36a

& n.3. The court also observed that, because the CDs promised a fixed rate of return, they were not "tied to the success of any of SIB's purported investments" in covered securities. *Id.* at 37a; see *ibid.* (stating that respondents did not allege that "they deposited their money in the bank for the purpose of purchasing covered securities") (internal quotation marks and citation omitted).

Second, the court of appeals held that there was an insufficient "connection between the fraud and [the] sales" of covered securities that certain investors had undertaken to raise money to buy CDs. Pet. App. 39a. The court concluded that "[c]onstruing SLUSA to depend on the source of funds where the defendant does not care leads to absurd results," permitting different preclusion outcomes in cases involving virtually identical claims. *Id.* at 39a n.7.[6]

SUMMARY OF ARGUMENT

A. Under SLUSA, a state-law covered class action is precluded if the plaintiffs allege a material misrepresentation "in connection with the purchase or sale of a covered security." Congress imported that language from Section 10(b) of the 1934 Act, and this Court has consistently given the parallel Section 10(b) language a broad construction. The paradigmatic "connection" between a misrepresentation and a securities transaction exists when a wrongdoer misrepresents facts about

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[6] The court of appeals also separately analyzed the allegations that the Proskauer Defendants had made misrepresentations to the Commission that it lacked authority to investigate the Stanford entities. Pet. App. 40a-41a. The court concluded that those statements did not trigger SLUSA preclusion because they were "not more than tangentially related to the purchase or sale of covered securities." *Id.* at 41a.

a security in order to induce others to purchase or sell that security. This Court has made clear, however, that a broad range of other "connection[s]" to a securities transaction may be sufficient to trigger either Section 10(b) or SLUSA.

That broad reading is essential to the achievement of Congress's purposes in enacting both Section 10(b) and SLUSA. Under Section 10(b), it enhances the SEC's ability to protect the securities markets against a variety of different forms of fraud. Under SLUSA, it furthers Congress's objective of preventing the use of state-law class actions to circumvent the restrictions imposed by the PSLRA and by this Court's decisions constraining private securities-fraud suits.

B. To induce potential investors to purchase its CDs, SIB falsely represented that its assets were invested in the types of securities that are typically listed on a regulated national exchange. Under SLUSA, those false statements were "misrepresentation[s] * * * of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A). Indeed, the "connection" between the misrepresentations and the purported securities trades was particularly close because the misrepresentations were made *about* the trades. The misrepresentations thus "touch[ed]" and "coincide[d]" with the purported trades within the meaning of this Court's precedents.

The fact that the purported securities transactions did not actually occur does not render SLUSA inapplicable. In formal adjudications, the SEC has construed Section 10(b)'s "in connection with" requirement to encompass fraudulent schemes in which a wrongdoer falsely claims to have purchased or sold securities, or falsely states his intent to do so. A contrary approach

would produce anomalous results since, *inter alia*, it would immunize from Section 10(b) liability a particularly extreme form of deception. And, to the extent the statutory language is ambiguous, the reasonable view taken by the SEC in formal adjudications is entitled to judicial deference.

C. The court of appeals did not appear to dispute that, if the false statements concerning SIB's investments in covered securities were the *only* misrepresentations alleged in this case, respondents' complaints would be precluded by SLUSA. The court nevertheless held that the suits could go forward because, in the court's view, those misrepresentations were tangential to the overall fraud alleged in this case. Nothing in SLUSA's text supports that approach. Rather, Section 78bb(f)(1)(A) unambiguously encompasses all state-law covered class actions in which the plaintiff alleges a material misrepresentation having the requisite connection to a transaction in covered securities.

The court of appeals' approach would also disserve the purposes of both SLUSA itself and the antifraud provisions (Section 10(b) and Rule 10b-5) from which SLUSA's "in connection with" requirement is drawn. In the SLUSA context, that approach would increase the complexity of the preclusion analysis and would encourage plaintiffs to make wide-ranging allegations of non-securities-related misrepresentations simply to avoid preclusion. In the Section 10(b) context, it would create a loophole that could be exploited by unscrupulous actors, thereby impairing the SEC's ability to protect the securities markets.

Even if preclusion under Section 78bb(f)(1)(A) depended on the centrality of particular misrepresentations to an overall fraudulent scheme, respondents' suits

would be precluded. Respondents' own complaints stressed that the supposed liquidity of SIB's investments was crucial to respondents' perception that the CDs were a sound investment. And while the complaints also alleged other misrepresentations that reasonable investors would have viewed as relevant, only the securities-related misrepresentations purported to explain *how* SIB could deliver the promised above-market returns.

ARGUMENT

A. In SLUSA, As In Section 10(b), The Phrase "In Connection With" Should Be Given A Broad Construction

1. SLUSA precludes state-law covered class actions alleging a "misrepresentation or omission of a material fact," or the use of a "manipulative or deceptive device or contrivance," "in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A) and (B). In *Merrill Lynch, Pierce, Fenner & Smith Inc.* v. *Dabit*, 547 U.S. 71 (2006), this Court explained that the phrase "in connection with the purchase or sale of any security" appears in Section 10(b) and Rule 10b-5 and has received a settled judicial construction in that context. See *id.* at 85-86. Accordingly, the Court in *Dabit* gave the SLUSA language at issue in this case the same "broad interpretation" that this Court has long accorded "to the phrase in the context of § 10(b) and Rule 10b-5." *Id.* at 85.

Under Section 10(b) and Rule 10b-5, this Court has construed the phrase "not technically and restrictively, but flexibly," *SEC* v. *Zandford*, 535 U.S. 813, 819 (2002) (quoting *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 151 (1972)), to prohibit "*all* fraudulent schemes in connection with the purchase or sale of securities, whether the artifices employed involve a garden type

variety of fraud, or present a unique form of deception." *Superintendent of Ins.* v. *Bankers Life & Cas. Co.*, 404 U.S. 6, 10-12 & n.7 (1971) (quoting *A.T. Brod & Co.* v. *Perlow*, 375 F.2d 393, 397 (2d Cir. 1967)); see, *e.g.*, 3C Harold S. Bloomenthal & Samuel Wolff, *Securities and Federal Corporate Law* § 16:198.50 (West 2013). The Court has held that a misrepresentation or deceptive device is "in connection with the purchase or sale" of a security so long as it "touch[es]" a securities transaction. *Bankers Life*, 404 U.S. at 12-13; see *Dabit*, 547 U.S. at 80; *Santa Fe Indus., Inc.* v. *Green*, 430 U.S. 462, 475-476 (1977). For example, "it is enough" under this Court's precedents (albeit not a requirement) that the alleged misrepresentation or deceptive device "'coincide' with a securities transaction." *Dabit*, 547 U.S. at 85; see *Zandford*, 535 U.S. at 822; *Wharf (Holdings) Ltd.* v. *United Int'l Holdings, Inc.*, 532 U.S. 588, 597 (2001); *United States* v. *O'Hagan*, 521 U.S. 642, 656 (1997); see also *Alley* v. *Miramon*, 614 F.2d 1372, 1378 n.11 (5th Cir. 1980) (Wisdom, J.) (stating that a connection exists "when the proscribed conduct and the sale [or purchase] are part of the same fraudulent scheme").

Such a broad interpretation is necessary to effectuate the purposes of both Section 10(b) and SLUSA. With respect to Section 10(b), Congress intended the phrase "in connection with" to sweep widely enough to ensure the achievement of "a high standard of business ethics in the securities industry" and the successful substitution of "a philosophy of full disclosure for the philosophy of *caveat emptor*." *Zandford*, 535 U.S. at 819 (quoting *Affiliated Ute Citizens*, 406 U.S. at 151); see *Herman & MacLean* v. *Huddleston*, 459 U.S. 375, 382, 386-387 (1983) (describing Section 10(b) as "a 'catchall' antifraud provision"); *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185,

202 (1976) (describing Section 10(b) as reaching all "cunning devices" related to securities transactions) (quoting *Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the House Comm. on Interstate and Foreign Commerce*, 73d Cong., 2d Sess. 115 (1934) (statement of Thomas Corcoran)). With respect to SLUSA, a narrow reading of "in connection with" would "run contrary to SLUSA's stated purpose." *Dabit*, 547 U.S. at 86. Congress intended SLUSA "'to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives' of the [PSLRA]." *Ibid.* (quoting SLUSA § 2(5)). If plaintiffs could readily escape from the PSLRA's strictures by bringing securities-related class actions under state law, then the "effectiveness of the 1995 Reform Act" would be "undercut.' *Ibid.*

2. In construing the phrase "in connection with" in these contexts, this Court has not attempted to construct an elaborate test, or to enumerate all the potential "connection[s]" that might exist between deceptive conduct and the purchase or sale of securities. Cf. *Matrixx Initiatives, Inc.* v. *Siracusano*, 131 S. Ct. 1309, 1318-1319 (2011) (stating that "[a]ny approach that designates a single fact or occurrence as always determinative of an inherently fact-specific finding such as materiality, must necessarily be overinclusive or underinclusive") (citation omitted); *SEC* v. *National Sec., Inc.*, 393 U.S. 453, 465 (1969) (characterizing the securities laws as "an area where glib generalizations and unthinking abstractions are major occupational hazards"). The most obvious "connection" exists when a defendant misrepresents facts about a security in order to induce purchases or sales of that security. See Pet. App. 60a; cf. *Dabit*, 547 U.S. at 89. The Court has made clear,

however, that a variety of different kinds of connections, extending well beyond that paradigm, fall within Congress's broad and flexible language.[7]

First, a plaintiff need not be a party to a covered securities transaction in order for SLUSA preclusion to apply. The plaintiffs in *Dabit* had not bought or sold covered securities as a result of misrepresentations made during the relevant period, but had continued to hold such securities "long beyond the point when, had the truth been known, they would have sold." *Dabit*, 547 U.S. at 75. The Court nevertheless found the suit to be precluded, explaining that "[u]nder our precedents, it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone

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[7] Attempts by the courts of appeals to restate the "in connection with" language in a way that is more restrictive than this Court's reference to "touch[ing]" are generally tailored to the facts of a particular case and do not encompass the whole range of possible connections under Section 78bb(f). See, *e.g.*, *Romano* v. *Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010) (explaining that requiring deception to have "induced" a transaction is "more exacting" than simply requiring "coincide[nce]"). Of the different formulations used by the courts of appeals, however, the standard adopted by the Fifth and Ninth Circuits—*i.e.*, whether the alleged material misrepresentation (or the alleged use of a manipulative or deceptive device) and a covered securities transaction "coincide or are more than tangentially related," Pet. App. 32a (emphasis omitted)—is the most apt. Although the court below misapplied that standard to the facts of this case, see pp. 24-31, *infra*, the standard itself appropriately covers a broad range of connections, including those in which "coincide[nce]" may not be present. See U.S. Pet. Stage Br. 9-10. That inclusive understanding of the relevant statutory language best serves the purposes of both SLUSA and Section 10(b). Accordingly, if this Court finds it advisable to provide additional guidance in light of the varying formulations used by different courts of appeals, see Pet. App. 29a-32a, it should endorse the standard previously adopted by the Fifth and Ninth Circuits.

else. * * * The requisite showing, in other words, is 'deception "in connection with the purchase or sale of any security," not deception of an identifiable purchaser or seller.'" *Id.* at 85 (quoting *O'Hagan*, 521 U.S. at 651, 658); see *id.* at 89 (stating that "the identity of the plaintiffs does not determine whether the complaint alleges fraud 'in connection with the purchase or sale' of securities").

Second, a material misrepresentation or use of a deceptive device may be "in connection with the purchase or sale of [a] security" even though the parties to the relevant securities transaction have not been deceived. In *O'Hagan*, the defendant fiduciary (a lawyer) committed fraud when he secretly misappropriated confidential information from his principal and used it to engage in securities trading with third parties. See 521 U.S. at 648. The Court found that misconduct to be "in connection" with the securities transactions "even though the person or entity defrauded [wa]s not the other party to the trade, but [wa]s, instead, the source of the nonpublic information." *Id.* at 656; see *Dabit*, 547 U.S. at 89; *Zandford*, 535 U.S. at 824; cf. *United States* v. *Naftalin*, 441 U.S. 768, 772-773 & n.4 (1979) (rejecting the contention that Section 17(a)(1) of the Securities Act of 1933, 15 U.S.C. 77q(a)(1)—which prohibits any device, scheme, or artifice to defraud "in the offer or sale of any securities"—requires that the deception be practiced on a party to a securities trade).

Third, the "in connection with" standard may be satisfied even when the misrepresentation in question neither addresses nor affects the value of a security. See *Zandford*, 535 U.S. at 820 ("[N]either the SEC nor this Court has ever held that there must be a misrepresentation about the value of a particular security in order to

run afoul of the Act."). Thus, in *O'Hagan*, the misrepresentation was the fiduciary's false profession of his intent to honor his duty of loyalty to his principal. See 521 U.S. at 653-654. In *Bankers Life*, the misrepresentation was that the seller of the securities would receive the sales proceeds, when insiders actually intended to misappropriate those proceeds for their own use. See 404 U.S. at 9-10.

To be sure, the phrase "in connection with" does not have unlimited breadth. This Court has explained, for instance, that the language "must not be construed so broadly as to convert any common-law fraud that happens to involve securities into a violation of § 10(b)." *Zandford*, 535 U.S. at 820; see *O'Hagan*, 521 U.S. at 656-657.[8] The Court has made clear, however, that a wide variety of "connection[s]" between the defendant's misconduct and the relevant securities transaction can trigger Section 10(b), Rule 10b-5, and SLUSA preclusion. That inclusive reading is essential to ensure, *inter alia*, that the federal securities laws can serve their intended functions even with respect to novel forms of fraud.

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[8] Section 10(b) and Rule 10b-5 also do not apply when a plaintiff alleges mere breach of fiduciary duty or breach of contract. See *Zandford*, 535 U.S. at 820 (indicating that Section 10(b) does not cover "a case in which a thief simply invested the proceeds of a [nondeceptive] conversion in the stock market"); *Wharf Holdings*, 532 U.S. at 596-597 (indicating that Section 10(b) does not cover a mere "fail[ure]" to carry out a promise to sell securities"); *Bankers Life*, 404 U.S. at 12 (indicating that Section 10(b) does not cover acts that amount to "no more than internal corporate mismanagement"); see also *Santa Fe*, 430 U.S. at 474-475.

B. Respondents' Complaints Allege Material Misrepresentations In Connection With The Purchase Or Sale Of Covered Securities

1. a. The overarching fraudulent scheme in this case depended on continued CD purchases over time so that new infusions of money could be used to pay earlier investors. See Pet. App. 6a. Respondents have alleged misrepresentations to the effect that "SIB's assets were 'invested in a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks.'" *Id.* at 8a; see J.A. 744-745. Because securities having those characteristics "typically qualify as SLUSA-covered securities," Pet. App. 72a; see *id.* at 65a n.11, those alleged false statements are properly treated, for purposes of SLUSA preclusion, as representations that SIB was investing the proceeds of CD sales in securities listed on a regulated national exchange.

Those misrepresentations—which were doubtless intended to convince the respondents that investments in the CDs were as secure and liquid as investments in securities publicly traded on U.S. exchanges—were directly linked to the purchase or sale of covered securities. See generally *Dabit*, 547 U.S. at 77-78; *Zandford*, 535 U.S. at 819-825; *O'Hagan*, 521 U.S. at 656; *Bankers Life*, 404 U.S. at 10-13. False statements *about* one's own transactions in covered securities are naturally characterized as misrepresentations "in connection with the purchase or sale of" such securities. And a misrepresentation about whether a transaction took place at all (or will take place in the future) has a particularly tight—indeed, inherent—connection to "the purchase or sale." Nothing is more fundamental to a purchase or sale than its very existence.

To be sure, the scheme alleged here differs from the paradigmatic SLUSA-precluded case, because the misrepresentations about SIB's investments were not used to induce respondents to become parties to any covered securities transaction. But neither the text of SLUSA nor the prior Section 10(b) jurisprudence that Congress sought to incorporate requires that this *particular* "connection" with a covered securities transaction exist in order for SLUSA preclusion to be triggered. As in *Dabit*, *Zandford*, *O'Hagan*, and *Bankers Life*, the misrepresentations here "touch[ed]" and "coincide[d]" with covered securities transactions, and the requisite connection therefore exists.

b. The misrepresentations alleged in respondents' complaints were "of a material fact." 15 U.S.C. 78bb(f)(1)(A). A misrepresentation is material if there is a "substantial likelihood that the disclosure" would have "significantly altered the 'total mix' of information made available." *Basic Inc.* v. *Levinson*, 485 U.S. 224, 231-232 (1988) (citation omitted); see *Matrixx*, 131 S. Ct. at 1321-1323; *TSC Indus., Inc.* v. *Northway, Inc.*, 426 U.S. 438, 449 (1976) (concluding in the proxy-solicitation context that "[a]n omitted fact is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote"). The misrepresentations about SIB's investments would have been significant to reasonable CD purchasers because those misrepresentations bore on the safety and liquidity of the CDs and the likelihood that SIB could deliver the promised returns. Indeed, respondents specifically alleged that the promise that "money was being invested in safe, liquid investments that were completely insured" was a "material misstatement be-

cause the money was not invested in safe, liquid and fully insured investments." J.A. 480; see J.A. 715.

2. Respondents have argued that there can be no "misrepresentation * * * in connection with the purchase or sale" of covered securities if no actual transaction involving those securities ever took place. *E.g.*, Supp. Br. for Troice Resp. 2-3. That is incorrect.[9] See Pet. App. 61a-63a. In keeping with this Court's statements that securities-related "offerings [should] be judged as being what they were represented to be," *SEC* v. *C.M. Joiner Leasing Corp.*, 320 U.S. 344, 353 (1943); see *SEC* v. *United Benefit Life Ins. Co.*, 387 U.S. 202, 211 n.15 (1967); *SEC* v. *Lauer*, 52 F.3d 667, 670-671 (7th Cir. 1995), lower courts have recognized that the "in connection with" requirement can be satisfied when a party falsely promises to carry out a securities purchase or sale or falsely claims to have done so. See, *e.g.*, *Instituto De Prevision Militar* v. *Merrill Lynch*, 546 F.3d 1340, 1349 (11th Cir. 2008) (citing *Grippo* v. *Perazzo*, 357 F.3d 1218, 1223-1224 (11th Cir. 2004)); *In re Herald, Primeo & Thema Sec. Litig.*, No. 09-289, 2011 WL 5928952, at *6, *8 (S.D.N.Y. Nov. 29, 2011); *Barron* v. *Igolnikov*, 2010 WL 882890, at *4-*5 (S.D.N.Y. Mar. 10, 2010) ("It is not essential that Madoff actually performed any trades or acquired any securities."); see also 1 *McLaughlin on Class Actions: Practice and Procedure* § 2:44, at 332 (9th ed. 2012).

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[9] Respondents' complaints do not clearly allege whether SIB failed to engage in any transactions at all involving "highly marketable securities issued by stable governments, strong multinational companies and major international banks," Pet. App. 64a, or whether it merely engaged in significantly fewer of them than it had represented it would. See, *e.g.*, J.A. 444-445, 462-463. Respondents' suits are precluded under either reading of their complaints.

The SEC has taken the same position in formal adjudications. In *In re Orlando Joseph Jett*, Admin. Pro. File No. 3-8919, 2004 WL 2809317 (Mar. 5, 2004), for example, a trader told his employer that he had engaged in profitable securities trades that did not actually occur. See *id.* at *22. The SEC determined that the trader's fraud "coincided with 'purchases or sales,'" *id.* at *21, because, *inter alia*, he had "portray[ed] activities as securities purchases and sales that, in fact, are no such thing," and had thereby deceived his employer "into believing that his reported trading profits derived from real securities trading," *id.* at *22. The SEC further explained that "the connection between the purported securities trades and the fraud could not be more direct because the fraud goes to the very question of whether any purchase or sale even existed." *Ibid.*

In *In re Richard J. Line*, Admin. Pro. File No. 3-9134, 1996 WL 582948 (Sept. 30, 1996), a broker solicited transfers of money from parents of college-bound students to reduce the parents' holdings and increase their eligibility for financial aid. See *id.* at *1. He promised that he would invest the transferred money in stocks and mutual funds and later return the money to the parents "together with interest calculated at above-market rates." *Id.* at *2. Instead, the broker "misappropriated" the money "to pay for personal expenses." *Ibid.* The SEC found violations of Section 10(b) and Rule 10b-5 even though the broker's claimed securities transactions had never actually occurred. See *ibid.*; see also *In re D.S. Waddy & Co.*, Release No. 34-4322, 1949 WL 35528, at *2 (Oct. 6, 1949).[10]

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[10] "A contract to purchase or sell securities is expressly defined by § 3(a) of the 1934 Act, 15 U.S.C. § 78c(a), as a purchase or sale of securities for the purposes of that Act," even when (due to one party's

Here, respondents' complaints are fairly read to allege that SIB falsely promised to buy covered securities using the money it received from respondents and other investors (and falsely claimed it had already made such purchases with past investors' money). The misrepresentations were thus "in connection with" purported transactions in covered securities. The fact that SIB is alleged not to have made the purchases and sales it claimed does not sever that connection. Cf. *Zandford*, 535 U.S. at 819 (noting that the SEC has long "maintained that a broker who accepts payment for securities that he never intends to deliver * * * violates § 10(b) and Rule 10b-5"); *Naftalin*, 441 U.S. at 770-771, 773 n.4; see also generally *Durland* v. *United States*, 161 U.S. 306 (1896); 3 Restatement (Second) of Torts § 530 cmt. c, 64-65 (1977).

A contrary interpretation of the statutory language would produce anomalous results. It would protect the most egregious forms of fraud, involving the most extensive deception, from the reach of the preclusion provision (as well as from the reach of Section 10(b)). A

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breach of the agreement) no securities ultimately change hands. *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 750-751 (1975) (footnote omitted). Thus, when a customer provides money to a broker for use in buying securities, and the broker promises to do so but instead diverts the funds to another use, an *actual* "purchase * * * of securities" (as the 1934 Act defines that term) has occurred. Section 10(b) would apply in that situation even if it did not cover misrepresentations about *non-existent* purchases or sales. The SEC adjudications described in the text, however, did not involve that fact pattern, and the SEC did not suggest that either case turned on the existence of a "contract to purchase or sell securities." See 15 U.S.C. 78c(a). Rather, the SEC concluded in both cases that fraud "in connection with the purchase or sale of [a] security" occurs when a wrongdoer falsely represents that he has consummated (or intends to consummate) such a transaction.

wrongdoer who regularly purchased and sold covered securities, but who claimed that his trading activities were more successful than they actually were, would clearly make a "misrepresentation * * * in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A). Because a misrepresentation about the very existence of a transaction is simply a more extreme version of that kind of lie, there is no sound reason to conclude (for purposes either of SLUSA or of Section 10(b) and Rule 10b-5) that it lacks the requisite "connection" with a purchase or sale. Cf. *Bankers Life*, 404 U.S. at 10-11 n.7 (stating that the phrase "in connection with" extends to schemes that "present a unique form of deception," since "[n]ovel or atypical methods should not provide immunity from the securities laws") (quoting *A.T. Brod*, 375 F.2d at 397); *Dabit*, 547 U.S. at 86 ("It would be odd, to say the least, if SLUSA exempted [a] particularly troublesome subset of class actions from its pre-emptive sweep.").

To the extent that the statutory language is ambiguous, the SEC's view should be afforded deference. The SEC has reasonably determined, including in the formal adjudications described above, that a false statement about the existence of a securities transaction is a misrepresentation "in connection with" the purchase or sale of securities for purposes of Section 10(b) and Rule 10b-5. See 15 U.S.C. 78j(b); *Zandford*, 535 U.S. at 819-820 (explaining that the SEC's "interpretation of the ambiguous text of § 10(b), in the context of formal adjudication, is entitled to deference if it is reasonable"); see also *Matrixx*, 131 S. Ct. at 1321-1322 n.10. Because the phrase "in connection with" has the same meaning in SLUSA as in those antifraud provisions, the SEC's reasonable interpretation is controlling here.

C. The Court Of Appeals Erred In Allowing Respondents' Suits To Go Forward Based On The Court's Determination That Misrepresentations About Transactions In Covered Securities Were Tangential To The Overall Fraudulent Scheme

1. The court of appeals described the alleged statement that "SIB's portfolio of assets was invested in 'highly marketable securities issued by stable governments, strong multinational companies and major international banks'" as "one of" the "(mis)representations * * * made to the [respondents] in an attempt to lure them into buying the worthless CDs." Pet. App. 35a-36a. The court did not appear to dispute that, if that had been the *only* misrepresentation alleged in respondents' complaints, respondents' suits would be precluded by SLUSA. The court discounted the significance of that misrepresentation, however, on the ground that it was "merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendants' fraud," which included a "host of" other misrepresentations about the safety and security of an investment in the CDs. *Id.* at 35a-37a (footnotes omitted). The court thus viewed SLUSA preclusion as turning on the centrality to the overall Ponzi scheme of the alleged misrepresentations about transactions in covered securities.

That limitation is inconsistent with the text of the SLUSA provision on which petitioners have relied. Section 78bb(f)(1)(A) precludes state-law class actions that allege "*a* misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(A) (emphasis added). That provision applies by its terms so long as the relevant misrepresentation concerns a "material fact" and bears the requisite "connection" to a transac-

tion in covered securities.[11] If Congress had intended SLUSA preclusion to turn on the link between covered securities transactions and the overall fraudulent scheme, it might have drafted the provision to refer to a "scheme to defraud in connection with the purchase or sale of a covered security."[12] See *Naftalin*, 441 U.S. at 773 ("Congress did not write the statute that way").

The approach taken by the court of appeals, which turns on the perceived relationship between the defendant's alleged misrepresentations and the "heart, crux, or gravamen" of the fraud, Pet. App. 36a (internal quotation marks and footnotes omitted), would further contravene the language of the statute by shifting the focus of SLUSA preclusion away from the allegations of the complaint. See 15 U.S.C. 78bb(f)(1) (limiting class actions "by any private party *alleging*" particular bad acts) (emphasis added). To be sure, some effort to fore-

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[11] Under Section 10(b) and Rule 10b-5, "[t]he role of the materiality requirement is * * * to filter out essentially useless information." *Basic Inc.*, 485 U.S. at 234-235; see *TSC Indus., Inc.*, 426 U.S. at 449. Congress's inclusion of a materiality requirement in Section 78bb(f)(1)(A) ensures that SLUSA preclusion will not sweep in every state-law class action that includes a stray allegation of a misrepresentation connected with a covered securities transaction.

[12] Indeed, the next subsection of SLUSA separately precludes state-law covered class actions alleging "that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security." 15 U.S.C. 78bb(f)(1)(B). In addition, Congress tailored the scope of SLUSA preclusion by crafting several exceptions to the general preclusion rule. See note 2, *supra*. The express inclusion of those exceptions confirms that Congress did not intend any others. See *Dabit*, 547 U.S. at 87-88 (explaining that the existence of the exceptions "evinces congressional sensitivity to state prerogatives in this field and makes it inappropriate for courts to create additional, implied exceptions"); cf. *TRW Inc.* v. *Andrews*, 534 U.S. 19, 28 (2001).

cast the manner in which the plaintiff's case will ultimately be proved may be useful as a way to counter artful pleading—that is, to capture a complaint in which a plaintiff tries to escape SLUSA preclusion by avoiding reference to misrepresentations or deceptive devices connected with covered securities transactions, while asserting a claim that could not be proved without evidence of such misrepresentation or deception. See, *e.g.*, *Freeman Invs., L.P.* v. *Pacific Life Ins. Co.*, 704 F.3d 1110, 1115 (9th Cir. 2013); *Backus* v. *Connecticut Cmty. Bank, N.A.*, 2009 WL 5184360, at *10-*11 (D. Conn. Dec. 23, 2009), cited in Pet App. 36a n.6; see also *Beneficial Nat'l Bank* v. *Anderson*, 539 U.S. 1, 6 (2003); cf. *Bankers Life*, 404 U.S. at 12-13. But there is no justification for disregarding an allegation that is actually *in* the complaint and that falls within the scope of the preclusion provision. Under Section 78bb(f)(1)(A), the focus of the preclusion analysis must remain on the allegations themselves. Here, respondents alleged material misrepresentations having the requisite connection with the purchase or sale of covered securities.

2. The court of appeals' approach to the "in connection with" requirement also disserves the purposes of both SLUSA and the antifraud provisions (Section 10(b) and Rule 10b-5) from which that language is drawn. Attempting to identify the heart or crux of an alleged fraud will often be a difficult and subjective task. In enacting SLUSA, Congress sought to head off precluded actions at their inception, before defendants are forced to expend significant resources on suits that would otherwise have to satisfy the heightened pleading standards and other restrictions of the PSLRA, or be subject to dismissal as "abusive and meritless," 1995 House Conf. Rep. 31; see SLUSA § 2(1)-(3), 112 Stat. 3227; 15

U.S.C. 78bb(f)(2) (allowing for removal of suits covered by Section 78bb(f)(1)).

A preclusion test that requires courts to intuit the theme or main idea of the complaint, or to assess the relative importance of securities-related and other misrepresentations to the overall fraudulent scheme, would undermine that congressional purpose. Such a test could give rise to lengthy and expensive litigation over the application of Section 78bb(f), particularly in cases involving wide-ranging fraudulent schemes. And because the test is so subjective (and untethered from the language of the statute), it would increase the likelihood of inconsistent outcomes in cases involving similar allegations. Cf., *e.g.*, *Consolidated Rail Corp.* v. *Gottshall*, 512 U.S. 532, 552 (1994) (rejecting judge-made test requiring "highly subjective determinations" that "would be bound to lead to haphazard results").

The court of appeals' approach would also invite plaintiffs seeking to avoid SLUSA preclusion to surround allegations of material misrepresentations "in connection with" covered securities transactions with allegations of other kinds of misrepresentations. That, too, would undermine the purpose of SLUSA—a statute that was enacted to prevent end-runs around the requirements of the PSLRA, see *Dabit*, 547 U.S. at 82—by increasing the complexity and cost of this type of litigation and by limiting the effect of the broad language that Congress borrowed from Section 10(b), see *id.* at 86; *Zandford*, 535 U.S. at 819; see also H.R. Conf. Rep. No. 803, 105th Cong., 2d Sess. 14 (1998) (1998 House Conf. Rep.) (stating that "increase in state activity has the potential not only to undermine the intent of the Act, but to increase the overall cost of litigation") (citation omitted).

The temptation to bury a preclusion-triggering allegation in this way would be particularly great where, as here, the defendants in the suit are service providers who are alleged to have aided and abetted a securities fraud. Such providers are not subject to a private action under the federal securities laws. See *Central Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 191 (1994). But under an approach to SLUSA preclusion that discounts a misrepresentation about a covered securities transaction if the complaint alleges enough other kinds of misrepresentations, class-action plaintiffs would have a powerful reason to allege that the providers took a variety of misleading actions. See *id.* at 189 (discussing "danger of vexatiousness" in private suits against secondary actors, including "increased costs" passed onto "client companies" and "the company's investors"); 1998 House Conf. Rep. 14-15.

Finally, because the language of SLUSA is so similar to (and is drawn from) the language of Section 10(b) and Rule 10b-5, the court of appeals' approach could ultimately impair the SEC's authority to enforce the securities laws. If SLUSA's "in connection with" requirement depends on whether an alleged misrepresentation about the existence of a covered securities transaction is central to the defendant's overall fraudulent scheme, the same centrality element presumably would be required by the antifraud provisions that the SEC enforces. Thus, a similar misrepresentation could escape antifraud coverage on the ground that it was not central to a fraud having a significantly broader purpose or focus. Such a rule has no grounding in this Court's Section 10(b) precedents or in the administrative decisions of the SEC, and it would create a loophole that might be exploited by unscrupulous actors, thereby undermining

"the fundamental purpose of the 1934 Act 'to substitute a philosophy of full disclosure for the philosophy of *caveat emptor*.'" *Santa Fe*, 430 U.S. at 477 (citation omitted); see *Dabit*, 547 U.S. at 78 (explaining that "[t]he magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated").

In contrast, there is no force to any of the "policy considerations" on which the court of appeals relied in deciding that it was necessary to identify the "heart" of the fraud. Pet. App. 26a.[13] The court of appeals expressed concern that applying SLUSA according to its plain text would unduly interfere with the "vital role of state law in regulating non-national securities." Pet. App. 28a. But "the evident purpose of [SLUSA] is to limit the availability of remedies under state law," *Dabit*, 547 U.S. at 88 n.13, and Congress defined the set of class actions that it intended to preclude by reference to a pre-existing statutory phrase that this Court has broadly construed.

In any event, SLUSA "does not actually pre-empt any state cause of action" (since it applies only to class actions or actions brought on behalf of 50 or more plaintiffs), and it contains tailored exceptions that "evince[] congressional sensitivity to state prerogatives in this

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[13] The court of appeals stated that this Court has "reli[ed] on 'policy considerations' in its determination of the scope of the 'in connection with' language in Section 10(b)." Pet. App. 26a (quoting *Blue Chip Stamps*, 421 U.S. at 737). That is incorrect. The Court in *Blue Chip Stamps* relied on "policy considerations" not to construe the phrase "in connection with" in Section 10(b), but rather to determine the scope of the judicially created private right of action. See *Dabit*, 547 U.S. at 84. That distinction is crucial, since the "in connection with" requirement applies to SEC enforcement actions as well as to private suits.

field." *Dabit*, 547 U.S. at 87. Moreover, the text of SLUSA contains sufficient limits to allay any concern that SLUSA will block every "group claim" against an issuer that "advertises that it owns [covered securities] in its portfolio." Pet. App. 29a. Unless such a case involves a material misrepresentation (or the use of a manipulative or deceptive device or contrivance) in connection with transactions in those covered securities, SLUSA preclusion will not be an issue.

3. Even if SLUSA preclusion depended on the centrality to the overall fraud of a defendant's securities-related misrepresentations, that requirement would be satisfied in this case. Although respondents did not allege that Stanford and SIB sought to induce investors to purchase covered securities, their misrepresentations about their own holdings were crucial to the Ponzi scheme. The court of appeals reached the opposite conclusion only because it underestimated the role the statements about SIB's investment portfolio played in the fraud on the CDs' purchasers.

The "crux" of the fraud, Pet. App. 36a, was to convince investors that the CDs were safe, liquid investments that would deliver high returns. The representation that the CDs would be backed by "a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks," Pet. App. 8a, was integral to the success of that tactic. There was no other apparent source of the funds necessary to make the CDs function "[l]ike well-performing equities," *id.* at 11a, and to allow the investors to realize the financial benefits they had been promised. See *id.* at 12a (noting allegation by certain respondents that they "would not have purchased the SIB CDs" if they had "been aware of the

truth" that SIB's "portfolio consisted primarily of illiquid investments or no investments at all"); J.A. 444-445 (alleging that persons making "marketing pitches to prospective investors" were trained to stress the "liquidity/marketability of SIB's invested assets" as the "most important factor to provide security to SIB clients"). Accordingly, the misrepresentations concerning SIB's purported transactions in covered securities were central to the fraudulent scheme.

Contrary to the court of appeals' suggestion (Pet. App. 35a-37a), the importance of those statements was not diminished by the existence of the various other misrepresentations (*e.g.*, that SIB was scrutinized by government auditors, that it employed a professional staff, and that the CDs were protected by insurance, see, *e.g.*, *id.* at 8a-9a, 37a) that SIB allegedly used to convince investors that the CDs were a sound purchase. Those other misrepresentations could certainly have been relevant to a prospective purchaser. But only the assertions about covered securities would have answered investors' questions about *how* SIB could deliver the promised high returns on the CDs—questions that any reasonable investor would have asked before buying a financial instrument from a foreign bank. And many of the other misrepresentations to which the court of appeals referred seem to have been designed to bolster the lie about the backing securities, suggesting to investors that trained staff operating under knowledgeable supervision were successfully carrying out trades in "highly marketable securities" to ensure the bank's financial health. See *id.* at 8a, 37a.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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AMICUS CURIAE BRIEF

SUPREME COURT, U.S.
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Nos. 12-79, 12-86, 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP,
Petitioner,

v.

SAMUEL TROICE, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF *AMICUS CURIAE* BREAZEALE, SACHSE & WILSON, LLP IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST [1]

Amicus curiae Breazeale, Sachse & Wilson, LLP is among the oldest and largest law firms in Louisiana. It is a defendant in a securities class action lawsuit under Texas state law currently pending in the U.S. District Court for the Northern District of Texas. The plaintiffs in that lawsuit allege that *amicus* aided and abetted and otherwise participated in a Ponzi scheme perpetrated by R. Allen Stanford. *Amicus* allegedly provided legal services to certain Stanford corporate entities. One of Breazeale's partners, defendant Claude F. Reynaud, Jr., allegedly also served as a director for a Stanford entity. On this basis, plaintiffs seek to hold *amicus* responsible for "at least $300 million," and potentially *all* of the financial losses resulting from the entire Stanford Ponzi scheme, on the theory that *amicus* is "jointly and severally liable . . . for the injuries caused by" all Stanford entities.

Under the Securities Litigation Uniform Standards Act ("SLUSA"), plaintiffs cannot pursue a class action under state law in any state or federal court if they allege a misrepresentation or omission of a material fact "in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1). As a result of the Fifth Circuit's ruling in *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012)—another case arising out of the Stanford Ponzi scheme—*amicus* has been unable

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[1] The parties have given blanket consents to the filing of *amicus* briefs; their written consents are on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* and its counsel made a monetary contribution to the preparation or submission of this brief.

to obtain dismissal of its lawsuit under SLUSA. Accordingly, *amicus* has a direct and immediate interest in the outcome of this case.

SUMMARY OF ARGUMENT

SLUSA precludes certain class actions under state law if they allege "a misrepresentation . . . in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). SLUSA's "in connection with" requirement must be understood in the context of "the particular concerns that culminated in SLUSA's enactment." *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 86 (2006). A survey of the policy concerns underlying SLUSA and its predecessor, the Private Securities Litigation Reform Act of 1995 ("PSLRA"), confirm that Congress intended the phrase "in connection with" to sweep broadly.

The late 1980s and early 1990s witnessed the proliferation of class actions targeting securities issuers, alleged instigators of securities fraud, and scores of third-party defendants peripherally connected to those primary actors. Notwithstanding several instances of far-reaching securities fraud, Congress saw many of these class actions as purely vexatious. And Congress determined that even meritorious class actions against the instigators of fraud imposed unacceptably high costs on third-party defendants, whose substantial financial resources made them frequent targets but whose connection to the underlying fraud was often remote or uncertain.

Against that backdrop, Congress thus enacted the PSLRA to impose heightened pleading standards in federal securities cases, to limit damages and attorney's fees, and to restrict joint and several

liability for third-party defendants in private actions. Congress also declined to re-establish federal aiding and abetting liability for those defendants. Plaintiffs attempted to circumvent the PSLRA by pursuing exclusively state-law claims in state court against alleged securities fraudsters and the third-party actors who provided them with services. Congress responded with SLUSA, which precludes class action lawsuits that allege "a misrepresentation or omission of a material fact in connection with . . . a covered security" from being brought under state law. 15 U.S.C. § 78bb(f)(1)(A).

The Ponzi scheme perpetrated by R. Allen Stanford is novel only in its magnitude. As the Fifth Circuit acknowledged, the scheme relied on a misrepresentation about covered securities, namely that Stanford's certificates of deposit (CDs) were backed by covered securities. Pet. App. 36. The only question is whether class action lawsuits involving such misrepresentations cease to be "in connection with . . . the purchase or sale of a covered security" if plaintiffs allege additional, unrelated misrepresentations, as the Fifth Circuit held. *See id.* at 38.

Among other factors, Congress's policy objectives in enacting the PSLRA and SLUSA strongly rebut that reading. Congress understood that Ponzi schemes and other large-scale securities frauds often involve numerous misrepresentations unrelated to securities; indeed, the paradigmatic case Congress considered, the Charles Keating class action litigation, involved many such misrepresentations. But Congress believed that the Keating class action litigation would have been subject to the PSLRA and SLUSA had it postdated those statutes—underscoring the breadth of cases Congress intended to cover. The Fifth

Circuit's reading is further undermined by Congress's particular concern that third-party defendants with tenuous connections to primary wrongdoers should not be subjected to disproportionate liability. Those are the very defendants most likely to be charged with numerous misrepresentations in order to connect them to the underlying fraud, and thus least likely to be covered by SLUSA under the Fifth Circuit's test. The cast of third-party defendants currently facing class actions under state law in relation to the Stanford Ponzi scheme vividly illustrates this point. Law firms, banks, auditors, broker-dealers, insurers, and a host of other service providers have been sued for allegedly aiding and abetting or otherwise advancing Stanford's Ponzi scheme. Most are charged with a web of misrepresentations or omissions; most face the prospect of joint and several liability for *all* losses resulting from Stanford's scheme. The allegations against these third-party defendants are indistinguishable from those Congress intended to subject to the PSLRA and SLUSA in order to protect third-party defendants from excessive liability. The Fifth Circuit's reading of SLUSA is incompatible with Congress's policy concerns, and should be rejected.

ARGUMENT

I. The PSLRA and SLUSA Broadly Protect Third-Party Defendants in Securities-Related Class Action Lawsuits

The clear purpose of the PSLRA and SLUSA is to broadly protect all kinds of defendants against "perceived abuses of the class-action vehicle in litigation involving nationally traded securities." *Dabit*, 547 U.S. at 81. By the mid-1990s, members of Congress had become alarmed that "nuisance filings,

targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant" in private securities litigation, injuring "'the entire U.S. economy.'" *Id.* (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). Congress found that as a result of such abuses, innocent issuers were "often forced to pay exorbitant 'settlements'" simply to avoid the costs of litigation. H.R. Rep. No. 104-369, at 32.

Congress was not merely concerned with how such abuses affected alleged instigators of securities fraud. Congress expressed particular concern that "[u]nderwriters, lawyers, accountants and other professionals" had become "prime targets of abusive securities lawsuits." S. Rep. No. 104-98, at 9 (1995). These third-party defendants were rarely charged with engineering securities frauds themselves. Rather, they were frequent targets of claims that they facilitated securities frauds masterminded by others. These defendants' assets made them attractive targets at a time when federal securities law allowed for joint and several liability. Such lawsuits deterred these putative defendants from providing services because the burdens associated with defending against often meritless class actions were so high. *See Hearings on Implementation of the Private Securities Litigation Reform Act of 1995: Hearing Before the Subcomm. on Fin. and Hazardous Materials of the H. Comm. on Commerce*, 105th Cong. 2 (1997) (statement of Rep. Michael G. Oxley, Chairman); 141 Cong. Rec. S8968 (daily ed. June 23, 1995) (remarks of Sen. Dodd).

In debating the appropriate response to these problems, Congress devoted considerable attention to

class actions arising from securities-related Ponzi schemes and other large-scale securities frauds, which commonly involve a central defendant who employs the services of numerous professional firms. The primary example cited throughout the Congressional record was Charles Keating's far-reaching fraud, which culminated in the collapse of his savings and loan in 1989, costing investors over $250 million. *E.g.*, 141 Cong. Rec. S9208 (daily ed. June 28, 1995) ("[W]e have heard the name of Charles Keating—perhaps one of the most famous of swindlers in recent memory—invoked many times on the floor during this debate."). Keating's "scheme [was] to sell stock and bonds by misrepresenting and omitting information concerning the soundness of [his company]'s financial condition." *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, 140 F.R.D. 425, 427 (D. Ariz. 1992). But those misrepresentations were only part of Keating's scheme; well before he sold investors worthless bonds, he allegedly made a laundry list of other misrepresentations to banking regulators, tax authorities, and others, which facilitated illegal transfers between Keating's savings and loan and its parent corporation and masked the savings and loan's risky loans and investments. *See, e.g.*, *Lincoln Sav. & Loan Ass'n v. Wall*, 743 F. Supp. 901, 907-08 (D.D.C. 1990).

The resulting class action lawsuits named an unprecedented number of defendants, including "more than fifty individuals, ten banks, four accounting firms, [and] half a dozen law firms" that had dealings with Keating. Patrick Dillon & Carl M. Cannon, *Circle of Greed* 109 (2010). Lawyers who represented the class testified to Congress that, because Keating was judgment-proof, the professionals who worked with him paid the vast majority of the recovery

obtained under the federal securities laws. *See Hearings on Common Sense Legal Reform Act: Hearing Before the Subcomm. on Telecomm. and Fin. of the H. Comm. on Commerce*, 104th Cong. 105-06 (1995) (testimony of William Lerach); *Hearings on Securities Litigation Reform: Hearing Before Subcomm. on Telecomm. and Fin. of the H. Comm. on Energy and Commerce*, 103d Cong. 255-56, 287 (1994) (testimony of Leonard Simon) ("*Hearings on Securities Litigation Reform*"). These attorneys warned Congress that its contemplated changes to the securities laws would materially impact future cases similar to the Keating class action lawsuits. As the class counsel in the Keating litigation, Leonard Simon, stated: "If the provisions of [the House's proposed bill] had been the law in 1989, we would almost certainly not have brought the Keating case. If we had brought the case, at best we would have been able to recover only a fraction of what we have been able to recover so far for the class members." *Hearings on Securities Litigation Reform* 301.

Congress, however, had no doubt that class actions against Keating and similarly culpable actors should and would continue to be maintained under federal securities laws after the PSLRA. *See, e.g.*, 141 Cong. Rec. S12203 (daily ed. Aug. 10, 1995) (remarks of Sen. Dodd). Congress believed that imposing tighter limits on securities class actions would not prevent plaintiffs from prevailing against defendants like Keating. *See, e.g.*, 141 Cong. Rec. S9034 (daily ed. June 26, 1995) (remarks of Sen. Bennett); 141 Cong. Rec. H2767 (daily ed. Mar. 7, 1995). But Congress also objected that "deep pocketed defendants, including accountants, underwriters, and other individuals who may be covered by insurance," were being singled out "without regard to their actual culpability."

H.R. Rep. No. 104-369, at 31; *see* S. Rep. No. 104-98, at 9. Such defendants, Congress concluded, required specific protections.

Congress's deliberations culminated in the PSLRA, which was designed to broadly "protect investors, issuers, and all who are associated with our capital markets." H.R. Rep. No. 104-369, at 32. Congress recognized that "[p]rivate securities litigation is an indispensable tool with which defrauded investors can recover their losses," *id.* at 31, but sought to ensure a proper balance between investor recovery and the burdens on less culpable defendants. The PSLRA enacted provisions designed to make it less appealing for plaintiffs to bring vexatious securities class actions under federal law. The Act capped damages and attorneys' fee awards; imposed heightened pleading standards for federal claims; allowed defendants to seek stays of discovery pending rulings on motions to dismiss; set criteria for selecting and compensating lead plaintiffs in class actions; and authorized hefty sanctions for frivolous lawsuits. *See* 15 U.S.C. § 78u-4. And the PSLRA did so regardless of whether the defendants in such actions are issuers, primary instigators of securities frauds, or third-party actors like accountants, insurers, or law firms. *Id.*

The PSLRA also specifically addressed Congress's concern that auditors, law firms, and other professionals had been disproportionately forced to pay damages to victims of large-scale frauds when their conduct was less culpable. The PSLRA eliminated joint and several liability unless plaintiffs show that a defendant knowingly violated the securities laws or, in some instances, the damages share owed by another party is uncollectible. 15 U.S.C. § 78u-4(f).

And the PSLRA deliberately left intact the Court's recent holding in *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164 (1994), that private parties could not sue those who merely aided and abetted primary violators of securities laws. *See* S. Rep. No. 104-98, at 19; *Stoneridge Inv. Partners, LLC v. Scientific Atlanta*, 552 U.S. 148, 162 (2008).

Congress soon realized, however, that the PSLRA was being circumvented by creative plaintiffs who simply reframed federal securities class actions as state-law claims. *See Dabit*, 547 U.S. at 82. Again, members of Congress noted that the problem was not limited to suits against issuers. As Representative William Tauzin explained: "We are back here today because . . . members of the trial board who were pressing these cases before simply did an end around. They went to State court . . . to do exactly what they used to do in Federal court," and pursued not only securities issuers and other alleged primary instigators, but also "the accountants, anybody else associated with a company . . . alleging fraud." 144 Cong. Rec. H10786 (daily ed. Oct. 13, 1998); *see* 144 Cong. Rec. H6057 (daily ed. Jul. 21, 1998) (remarks of Rep. White). The Keating class action lawsuits were once again cited as an example of the type of securities class action against "accounting firms, law firms, and investment bankers" that would have faced heightened standards under the PSLRA, and that plaintiffs' attorneys would have attempted to bring under state law. *Hearings on Securities Litigation Reform* 102. And as Mr. Simon testified, SLUSA would have precluded such state-law claims against Keating and various third-party defendants. *Id.*

Congress concluded that securities-related class actions brought under state law represented an "unforeseen 'loophole,'" and enacted SLUSA in response. S. Rep. No. 105-182, at 9 (1998). SLUSA was intended to "enact national standards" for a broad range of securities class actions. Pub. L. No. 105-353, § 2(5) (1998). Subject to narrow exceptions, SLUSA sought to ensure that "class actions relating to [covered securities] . . . alleging fraud or manipulation . . . [were] maintained pursuant to the provisions of federal securities laws, in federal court." H.R. Rep. No. 105-803, at 13 (1998) (Conf. Rep.). Congress in no way intended SLUSA to modify or limit the PSLRA, but rather to stop the PSLRA's goals from being circumvented through artful pleading. Pub. L. No. 105-353, § 2(2)-(3), (5); S. Rep. 105-182, at 9.

Thus, SLUSA, like the PSLRA, extends to all "securities class action lawsuits *involving* nationally traded securities," Pub. L. No. 105-353, § 2(5) (emphasis added), *i.e.*, class actions that allege "a misrepresentation or omission of a material fact in connection with . . . a covered security." 15 U.S.C. § 78bb(f)(1)(A). Such lawsuits, if brought under state law, are precluded; SLUSA requires class-action plaintiffs to sue in federal court, under the more robust federal rules limiting such claims. 15 U.S.C. § 78bb(f)(1)-(2); *see also* H.R. Rep. No. 105-803, at 13.

II. The Fifth Circuit's Decision Is Incompatible with Congress's Policy Judgments

In the Fifth Circuit's view, Stanford's Ponzi scheme *did* involve a misrepresentation about securities: Stanford (and, purportedly, several third-party defendants) falsely claimed that his CDs were safe investments because they were backed by his bank's

holdings of various covered securities. Were that the only alleged misrepresentation, SLUSA would preclude state-law claims arising from Stanford's fraud, as well as claims against third-party defendants who provided Stanford various services. But because that misrepresentation was accompanied by others—for instance that Stanford's CDs were generally sound, that regulators were carefully overseeing Stanford's bank, and that the bank was highly professional—the Fifth Circuit deemed misrepresentations about securities too "tangentially related" to Stanford's fraud to trigger SLUSA. Pet. App. 38.

The Fifth Circuit's holding that SLUSA preclusion applies only when a misrepresentation involving securities is "more than tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendants' fraud," *id.* (footnotes omitted), is inconsistent with the policy concerns animating SLUSA and the PSLRA. That holding ignores Congress's understanding that class actions involving numerous misrepresentations unrelated to securities would nonetheless be subject to the PSLRA and to SLUSA. That holding also ignores Congress's special solicitude for third-party defendants with limited connections to primary fraudsters—the very defendants most likely to face allegations the Fifth Circuit's test would deem unrelated to covered securities.

A. Congress Expected SLUSA To Apply Irrespective of Whether Misrepresentations About Covered Securities Were the "Heart" of a Fraud

Throughout debates over the PSLRA and SLUSA, Congress—not to mention the plaintiffs' bar—assumed that class actions against Keating and asso-

ciated defendants would have been sufficiently connected to covered securities to trigger SLUSA. *See supra* at 9-10. Yet Keating's scheme plainly involved a host of misrepresentations unrelated to securities. Keating misrepresented to federal banking regulators that his intent in acquiring Lincoln, an ailing savings and loan business, was to keep the existing management and continue lending to lower-income members of the surrounding community. He instead removed Lincoln's old managers, moved its operations, exited the mortgage business, began making speculative loans to high-risk enterprises, and heavily invested in junk bonds. *Wall*, 743 F. Supp. at 907-08. He misrepresented $94 million in Lincoln's tax liabilities through a tax-sharing agreement with Lincoln's parent company, which Keating also controlled; Keating used these misrepresentations to the federal government to effectively loan money from Lincoln to its parent. *Id.* at 908-11. He engineered numerous misstatements in Lincoln and its parent's financial statements that showed illusory profits justifying those large transfers. *Id.* at 911. Keating's misrepresentations to buyers of his company's bonds came only later, and built on these initial misrepresentations; he pitched his company's bonds as safe investments because of the purported financial soundness of Lincoln and its parent. *In re Am. Cont'l Corp. / Lincoln Sav. & Loan Sec. Litig.*, 140 F.R.D. at 427. And the third-party defendants who provided Keating with legal, financial, and other services were alleged to have made additional layers of misrepresentations or omissions to various regulators unrelated to securities. *See In re Am. Cont'l Corp. / Lincoln Sav. & Loan Sec. Litig.*, 794 F. Supp. 1424, 1441-54 (D. Ariz. 1992).

If the Keating class action litigation was Congress's idea of when misrepresentations about covered securities were central to a fraud, the alleged misrepresentations involved in Stanford's scheme would plainly satisfy that bar. Stanford's scheme, to a far greater extent than Keating's, depended on convincing would-be purchasers that his CDs were sound investments capable of achieving substantial returns—a claim Stanford established by misrepresenting that the CDs were backed by "a well-diversified portfolio of highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." Pet. App. 8a-9a. But for that false assurance, investors attested, Stanford's scheme could never have succeeded. Willis Br. 20. Keating, on the other hand, allegedly perpetrated other schemes to strip his savings and loan of assets and transfer them to its parent company for his personal use.

Congress, however, attached no significance to the nature or magnitude of Keating's various misrepresentations, either as it applied to suits against Keating himself or any of the more removed third-party defendants. Rather, Congress assumed that had the Keating litigation arisen after the PSLRA and SLUSA, all class actions against Keating and the third-party actors who provided him services would have unfolded in federal court, subject to the PSLRA's heightened requirements. *See, e.g.*, H.R. Rep. No. 105-803, at 13. Congress disregarded the relative importance of various misrepresentations in the Keating litigation for good reason. One of the PSLRA's policy objectives was to stop plaintiffs from singling out deep-pocketed defendants without regard to their culpability. And SLUSA's aim was to stop those same class-action firms from "evad[ing]" or

"circumvent[ing]" the PSLRA by reframing securities-related class actions under state law. *Id.* at 13-14.

Those policy motivations render the Fifth Circuit's interpretation implausible. Congress can hardly have intended to adopt an interpretation of the "in connection with" requirement that would reward those same firms for evading SLUSA by embellishing their complaints with additional allegations of misrepresentations unrelated to securities. Yet the Fifth Circuit's interpretation of the "in connection with" requirement invites just such manipulation, by hinging preclusion of state-law claims on an amorphous analysis of tangentiality. Depending on the circumstances of a particular defendant, and the skill with which a complaint is drafted, some class action lawsuits involving nationally traded securities will be subject to the PSLRA. Meanwhile, other class action lawsuits—perhaps even arising out the same underlying fraudulent scheme—will reap the benefits of proceeding under state law.

B. Congress Was Particularly Sensitive To the Need To Protect Peripheral Third-Party Actors Under the PSLRA and SLUSA

Out of all categories of defendants in securities-related class actions, Congress demonstrated special concern that defendants with a more remote role in an alleged fraud—*e.g.*, alleged aiders and abettors—should not face liability in private suits. The Fifth Circuit's interpretation of SLUSA's "in connection with" requirement would eviscerate Congress's considered judgment in this area.

Congress enacted the PSLRA in no small part because it was troubled by evidence that auditors,

law firms, and others who provided services to Keating had been "prime targets" of abusive securities litigation. S. Rep. No. 104-98, at 9; *see* H.R. Rep. No. 104-369, at 31. The law firm Jones Day was sued for aiding and abetting and otherwise conspiring with Keating by lobbying on his behalf, making political contributions for his companies, advising those companies in their dealings with bank examiners, and reviewing SEC registration statements and prospectuses. *In re Am. Cont'l Corp./Lincoln Sav. & Loan Sec. Litig.*, 794 F. Supp. at 1450-54. Touche Ross (now Deloitte & Touche), the auditing firm, allegedly violated federal securities laws by accepting an engagement to audit Keating's companies, starting work on the audit, and failing to detect or stop Keating's fraud—even though the audit was never completed. *Id.* at 1441-42. Lexecon, an economic consulting firm, was sued for preparing reports that generally vouched for the soundness of one Keating company; Keating allegedly used the reports to build credibility with federal regulators. *Id.* at 1448-49.

Virtually all of these defendants were sued for allegedly aiding and abetting Keating's fraud, for misrepresentations or omissions to regulators, or for impeding the discovery of Keating's fraud. *See id.* at 1441-54. All these third-party defendants were equally subject to joint and several liability, as well as burdensome discovery and all the other procedural devices Congress found troubling when employed in securities class actions. And virtually all recovery for Keating's victims ended up coming from these third-party defendants, since Keating himself was insolvent. *See Hearings on Common Sense Legal Reform Act: Hearing Before the Subcomm. on Telecomm. and Fin. of the H. Comm. on Commerce*, 104th Cong. 105-06 (1995) (testimony of William Lerach); *Hearings on*

Securities Litigation Reform 56, 287 (testimony of Leonard Simon).

Congress was well aware that the price of protecting these defendants from disproportionate liability would, in some cases, be to limit recovery for defrauded investors. Congress understood that almost half of the recovery in the Keating case came from aiders and abettors who would have been immune under the federal securities laws after *Central Bank of Denver*. *See, e.g.*, 141 Cong. Rec. S9110 (daily ed. June 27, 1995). Opponents warned that "[i]f [the PSLRA and SLUSA] had been in place at the time of the Keating fraud . . . there would have been no ability to recover against the fraudulent activity of the accomplices—the accountants, the lawyers, and others." 144 Cong. Rec. S4814 (daily ed. Mar. 13, 1998) (remarks of Sen. Bryan); *see* 141 Cong. Rec. H14048 (daily ed. Dec. 6, 1995) (remarks of Rep. Conyers). During the SLUSA debates, plaintiffs' attorneys from the Keating case cited lack of aiding and abetting liability and elimination of joint and several liability as two of the reasons why "the Keating case would have been problematic under the PSLRA, and the preemption of State law could have doomed the investers completely."[2] Yet Congress deliberately chose not to overrule *Central Bank of Denver* and affirmed in the PSLRA and SLUSA that aiding and abetting liability would be unavailable in

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[2] *Hearings on Securities Litigation Abuses: Hearing Before the Subcomm. on Securities of the S. Comm. on Banking, Housing, and Urban Affairs, 105th Cong.* 102 (1997) (statement of Leonard B. Simon); *Implementation of the Private Securities Litigation Reform Act of 1995: Hearing Before the Subcomm. on Fin. and Hazardous Materials of the H. Comm. on Commerce*, 105th Cong. 82 (1997) (same).

securities-related class actions involving nationally traded securities. *See* 15 U.S.C. § 78t(e). Congress likewise eliminated joint and several liability for third-party defendants absent proof of knowing violations of securities laws. 15 U.S.C. § 78u-4(f)(2)(A).

Congress's policy preferences as to third-party defendants are unmistakable. They are also fatal to the Fifth Circuit's interpretation of SLUSA, which would turn third-party defendants into second-class citizens for purposes of SLUSA's protections. Under the Fifth Circuit's perverse reading of the "in connection with" requirement, defendants alleged to have aided and abetted a securities-related fraud would be *most* likely to escape SLUSA preclusion, and *most* likely to therefore face joint and several liability under state law. Since defendants alleged to have aided and abetted a fraud will, by definition, be one step removed from the central fraud, complaints against them are likely to require additional allegations in order to explain their role and basis for liability. Thus, due to the nature of aiding and abetting claims, plaintiffs suing such defendants can more easily portray an alleged misrepresentation in connection with securities—even if key to the central fraud—as "merely tangential[]." Pet. App. 37–38, 42.

The claims against third-party defendants who provided services to and allegedly advanced Stanford's Ponzi scheme illustrate this problem. The Willis and BMB Defendants sold Stanford entities insurance policies and confirmed those entities were covered; they have been sued for allegedly failing to detect Stanford's fraud and for purportedly legitimizing his business. Proksauer Rose and Chadbourne & Parke allegedly aided and abetted Stanford's scheme by providing various legal services to Stanford entities.

Amicus allegedly aided and abetted Stanford by providing various legal services to Stanford entities; the law firm Greenberg Traurig faces very similar claims. Pershing LLC, a broker-dealer who handled wire transfers from Stanford's U.S. investors to Stanford's Antiguan accounts, was sued for failing to identify and stop Stanford's fraud. HSBC and Trustmark National Bank have been sued for facilitating the "flow of money" to Stanford. BDO LLP, which provided tax, auditing, and other services to Stanford entities, allegedly failed to exercise due diligence and uncover Stanford's fraud.[3]

Under the Fifth Circuit's reading, most of these complaints might be construed to involve a host of misrepresentations or omissions; nearly all of these defendants, for instance, are accused of somehow preventing governmental agencies from discovering Stanford's fraud. Yet the litany of allegations against these third-party defendants are indistinguishable from the class actions that prompted Congress to protect third-party defendants through the PSLRA and SLUSA. And the Stanford third-party defendants face exactly the same threat of disproportionate

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[3] JA 649-57, 751-66 (Willis Complaint ¶¶ 75-90 & Ex. 4); Chadbourne Br. at 10; First Amended Complaint at 59, *Official Stanford Investors Comm. v. Breazeale, Sachse & Wilson, LLP*, No. 3:11-cv-00329 (N.D. Tex. July 7, 2011) (Docket # 19); Complaint at 87, 153-54, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641 (N.D. Tex. Nov. 15, 2012) (Docket # 1); Amended Consolidated Complaint at 53, *Turk v. Pershing LLC*, No. 3:09-cv-02199 (N.D. Tex. June 18, 2012) (Docket # 76); Complaint at 43, *Mendez v. Pershing LLC*, No. 3:11-cv-00314 (N.D. Tex. Feb. 16, 2011) (Docket # 1); First Amended Petition at 2-3, *Rotstain v. Trustmark Nat'l Bank*, No. 3:09-cv-02384 (S.D. Tex. Nov. 13, 2009) (ECF # 1-5); Complaint at 22, 28, *Wilkinson v. BDO USA, LLP*, No. 3:11-cv-01115 (N.D. Tex. May 26, 2011) (Docket # 1).

liability that led Congress to enact SLUSA. Many state laws not only allow aiding and abetting liability, but also subject such defendants to joint and several liability. Class-action plaintiffs have sought to hold many of the above defendants—like the third-party defendants in the Keating litigation—liable for the entirety of the losses from Stanford's Ponzi scheme.[4] These cases, in sum, embody precisely the policy concerns that motivated the PSLRA and SLUSA, and should be subject to the remedies Congress chose.

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[4] *E.g.*, Willis Br. at 12 ("Respondents suggest that Willis and BMB are liable for all of their losses because they failed to detect Stanford's fraud"); First Amended Complaint at 59, *Official Stanford Investors Comm. v. Breazeale, Sachse & Wilson, LLP*, No. 3:11-cv-00329 (N.D. Tex. July 7, 2011) (Docket # 19) (alleging joint and several liability and damages of "at least $300 million); Complaint at 164, *Janvey v. Greenberg Traurig, LLP*, No. 3:12-cv-04641 (N.D. Tex. Nov. 15, 2012) (Docket # 1) (alleging class damages of $7 billion proximately caused by defendants); Complaint at 53, *Wilkinson v. BDO USA, LLP*, No. 3:11-cv-01115 (N.D. Tex. May 26, 2011) (Docket # 1) (alleging first class damages of $7.2 billion proximately caused by defendants).

CONCLUSION

The judgment of the Fifth Circuit should be reversed.

Respectfully submitted.

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CHADBOURNE & PARKE, LLP, *PETITIONER*

v.

SAMUEL TROICE, ET AL., *RESPONDENTS*

WILLIS OF COLORADO INCORPORATED, ET AL., *PETITIONERS*

v.

SAMUEL TROICE, ET AL., *RESPONDENTS*

PROSKAUER ROSE, LLP, *PETITIONER*

v.

SAMUEL TROICE, ET AL., *RESPONDENTS*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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INTRODUCTION AND INTERESTS OF *AMICUS CURIAE*[*]

Members of DRI—the Voice of the Defense Bar have extensive experience in litigating securities class actions, and they understand how these actions can be abused. When it occurs, this abuse unnecessarily drives up the cost of doing business in the United States and reduces the competitiveness of U.S. capital markets.

Congress and this Court have long been sensitive to the potential for abuse in this area. For that reason, they have strictly limited both the kinds of securities claims that private plaintiffs may bring and where and how they may bring them. Primary responsibility for securities law enforcement thus remains with the Securities Exchange Commission ("SEC") and the Justice Department, which do not operate with the same profit incentives as the private plaintiffs' bar.

To ensure the efficacy of its reforms in this area, Congress enacted the Securities Litigation Uniform Standards Act ("SLUSA"), which prevents parties from evading the federal limitations on private lawsuits by resorting to state law. SLUSA provides that "[n]o covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any

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[*] No party or counsel for a party authored this brief in whole or in part, and no person or entity other than DRI and its counsel has made a monetary contribution to the preparation or filing of this brief. All parties have consented to the filing of this brief, and letters reflecting their consent have been filed with the Clerk of Court.

private party alleging * * * a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)&(1)(A)(2006). Under SLUSA, then, such lawsuits may proceed only in federal court, subject to the limitations imposed by federal law.

The decision under review threatens to roll back these reforms by adopting an unduly restrictive view of SLUSA's "in connection with" requirement. The Fifth Circuit concluded that even if a case *does* "alleg[e] * * * a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security" (*id.*), it still may not meet the "in connection with" requirement if it alleges other misstatements as well. In other words, the Fifth Circuit effectively held that a state law class action is precluded only if it *predominantly* concerns a securities-related misrepresentation or omission.

SLUSA itself contains no such requirement—and inserting it now would open the door to the very same risks and abuses that this Court and Congress have worked for decades to avoid. Among other things, the Fifth Circuit's approach would pave the way for expanded state-law litigation against law firms, auditors, and other third-party professional services firms for aiding and abetting misstatements by their clients. These kinds of lawsuits—which often attempt to shift the entire cost of an investment-related fraud to a third party—are fraught with risk and impose costs that are inevitably passed on to direct participants in U.S. capital markets. Indeed, that is precisely why this Court has barred such private lawsuits as a matter of federal law.

This issue is of particular concern to DRI, an international organization of more than 22,000 attorneys involved in civil litigation defense. DRI has long been committed to making the civil justice system fairer, more efficient, and—when national issues like U.S. capital markets are involved—more consistent. To promote these objectives, DRI often participates as *amicus curiae* in cases that raise issues important to its members, their clients, and the judicial system at large. This is such a case.

DRI urges this Court to reverse the decision of the Fifth Circuit and adopt a reading of SLUSA that is more faithful to its language and design.

STATEMENT OF THE CASE

1. When Congress enacted the Securities Acts of 1933 and 1934 in the wake of the disastrous stock market crash of 1929, it created an "extensive scheme of civil liability" governing the national securities markets. *Central Bank of Denver* v. *First Interstate Bank of Denver*, 511 U.S. 164, 171 (1994). Since then, these "two statutes have anchored federal regulation of vital elements of our economy." *Merrill Lynch* v. *Dabit,* 547 U.S. 71, 78 (2006). Consistent with the national character of the U.S. securities markets, until 1995 nearly all significant private securities litigation was brought under the Securities Acts and filed in federal court.

This began to change in the 1990s, when Congress, reacting to widespread abuses, passed the Private Securities Litigation Reform Act ("PSLRA") and imposed strict limits on private securities lawsuits. Pub. L. No. 104-67, 109 Stat. 737, 15 U.S.C. § 78u-4; 15 U.S.C. § 78t(e)(1995). During the same period,

this Court independently recognized that certain kinds of enforcement actions—notably those brought against defendants who allegedly aided or abetted securities fraud—were particularly prone to abuse and for that reason did not belong in the hands of private citizens unless Congress provided otherwise. See *Central Bank*, 511 U.S. at 164; see also *Stoneridge Inv. Partners, LLC* v. *Scientific-Atlanta*, 552 U.S. 148, 158, 163–64 (2008) (underscoring this limitation).

Predictably, the strict new PSLRA rules governing private lawsuits under federal law prompted an increase in securities-related lawsuits brought under state law. So, in 1998, Congress passed another law—SLUSA—which precludes state law class action suits that allege a misrepresentation "in connection with" the sale or purchase of a covered security. Pub. L. No. 105-353, 112 Stat. 3227, 15 U.S.C. § 78bb(f)(1).

2. This case arises out of the collapse of a fraudulent scheme perpetrated by R. Allen Stanford and his affiliated companies, including Stanford International Bank ("SIB"), which issued worthless certificates of deposit that were allegedly backed by highly liquid securities. Unable to recover against the primary wrongdoers, the plaintiffs have turned their attention to a series of secondary actors, raising claims that would face significant obstacles in federal court. The suits asserted three basic types of claims: first, claims against an insurance company for its assurances that SIB had purchased insurance; second, claims against SEI Investment Company, which provided fund management software to a fund that invested in the worthless SIB certificates of deposit; and finally, claims against Stanford's attorneys for allegedly misleading the SEC regarding its ability to regulate SIB.

The district court held that SLUSA precluded these claims because the underlying fraud unquestionably involved the purchase or sale of covered securities. The Fifth Circuit disagreed and, purporting to apply a test from the Ninth Circuit, found that the three types of claims in this case were only tangentially related to the "purchase or sale of a security," in large part because they also alleged misrepresentations that did *not* reference any investment in covered securities.

SUMMARY OF THE ARGUMENT

The decision below would seriously undermine SLUSA, which itself was enacted to keep federal securities litigation reform from becoming a dead letter. As this Court has already held, SLUSA's key phrase—"in connection with"—should be broadly interpreted to accomplish Congress's objectives. So construed, it is clear that the Fifth Circuit erred when it held that SLUSA did not apply here.

The Fifth Circuit's decision is inconsistent not only with the statutory language but also with this Court's and Congress's view that the limits on securities class actions must be carefully policed, and that third-party aiding and abetting claims, which are particularly prone to abuse, should be brought by the SEC and not by private parties. If allowed to stand, the decision below will create a gaping loophole in the securities class action reforms and expose the U.S. capital markets to new and dangerous levels of liability. Moreover, this risk is unnecessary, because Congress has already given the SEC all the enforcement power it needs to investigate those who lie to the Commission or aid another in committing securities fraud. To safeguard Congress's PSLRA reforms and

the limits this Court has placed on private actions under the securities laws—and to ensure respect for the important policies served by SLUSA—this Court should reverse the decision of the Fifth Circuit.

ARGUMENT

I. The Fifth Circuit's approach is inconsistent with the plain language of SLUSA, as interpreted by this Court.

SLUSA limits the ability of private citizens to bring "covered class actions based upon the statutory or common law of any state" in cases "alleging"

> (A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or
>
> (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 78bb(f)(1).[1] "A 'covered class action' is a lawsuit in which damages are sought on behalf of more than 50 people," and "[a] 'covered security'" is "one traded nationally and listed on a regulated national exchange."[2] *Dabit*, 547 U.S. at 83.

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[1] SLUSA amended the Securities Act of 1933, Pub. L. No. 73-22, 48 Stat. 74 (1933 Act), and the Securities Exchange Act of 1934 , Pub. L. No. 73-298, 48 Stat. 881 (1934 Act) in "substantially identical" ways. *Dabit*, 547 U.S. at 82 n.6. Because they are more relevant here, we quote the amendments to the 1934 Act. See *ibid.*

[2] Respondents' lawsuits met the statutory definition of a "covered class action" once they were consolidated by the district

While section B applies to cases alleging that "the defendant" used a "manipulative or deceptive device or contrivance," the section at issue in this case—section A—applies SLUSA preclusion to *any* case alleging a "misrepresentation or omission of material fact in connection with the purchase or sale of a covered security," without regard to the identity of either the person who made the misrepresentation or the person who purchased or sold the covered security. 15 U.S.C. § 78bb(f)(1).

As this Court has recognized, SLUSA's use of "in connection with" did not occur in a vacuum. See *Dabit*, 547 U.S. at 84–85. The same phrase appears in section 10 of the 1934 Act, and in that context, this Court has interpreted it broadly for more than forty years. *Id.* at 85 ("[W]hen this Court *has* sought to give meaning to the phrase ['in connection with'] in the context of § 10(b) and Rule 10b-5, it has espoused a broad interpretation."). An interpretation that places "'broad discretionary powers' in the regulatory agency" has "been found practically essential" because "practices 'constantly vary and * * * practices legitimate for some purposes may be turned to illegitimate and fraudulent means.'" *Superintendent of Ins. of State of N.Y.* v. *Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971); see, *e.g.*, *Sec. Exch. Comm'n* v. *Zandford*, 535 U.S. 813, 819 (2002) (noting that "[i]n its role enforcing the Act, the SEC has consistently adopted a broad reading of the phrase 'in connection with the purchase or sale of any security'"). After surveying the judicial record, *Dabit* concluded that Congress intended to "incorporate" this "broad construction"

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court below. See Willis Pet. at 12 (citing 15 U.S.C. § 78bb(f)(5)(B)(ii)) (discussing the "grouping" of actions).

when it "imported the key phrase—'in connection with the purchase or sale'—into SLUSA's core provision." 547 U.S. at 85.

What *Dabit* did *not* hold, however, was that the scope of activity encompassed by the phrase "in connection with" in SLUSA was limited to acts for which a private plaintiff could recover in federal court. See *id.* at 84. The *Dabit* respondents made this argument, asserting that SLUSA did not reach their claims because they were mere holders of securities who lacked standing to bring a private securities action under federal law. See *id.* But this Court rejected the argument that "in connection with" must be "read narrowly to encompass (and therefore preempt) only those actions in which the purchaser-seller requirement of *Blue Chip Stamps* is met." *Id.* at 84–85. The Court held instead that "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Ibid.* In reaching this holding, the Court reasoned that "[a] narrow reading of the statute would undercut the effectiveness of the [PSLRA] and thus run contrary to SLUSA's stated purpose," which was "to prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the [PSLRA's] objectives." *Id.* at 86. Thus, following *Dabit,* a lawsuit that alleges the existence of fraud that "'coincides' with a securities transaction," by either "the plaintiff or by someone else," falls within SLUSA's scope. *Ibid.*

Here, the plaintiffs had alleged that they invested in the Stanford scheme in part because of representations that the CDs would be backed by covered securities. Under SLUSA's plain language and the guid-

ance provided in *Dabit*, that allegation alone should have been enough to trigger SLUSA preclusion.

But the Fifth Circuit held to the contrary—largely because the lawsuit also included *other* alleged misrepresentations. The plaintiffs alleged that the defendants also falsely represented that the CDs were a "safe and secure" investment with a high level of liquidity and consistently high rates of return. According to the Fifth Circuit, "[t]hat the CDs were marketed with some vague references" about the nature of the CDs' underlying investments "seems tangential" to the schemes allegedly advanced by the defendants.

The Fifth Circuit's approach improperly imports a new requirement for SLUSA preclusion—a requirement that the allegations about representations "in connection with" covered securities *predominate* over any other allegations in the complaint. This requirement is not reflected in the statutory text—and it would enable plaintiffs to evade preclusion through artful pleading. Moreover, as discussed further below, the Fifth Circuit's approach would frustrate the important policies that underlay SLUSA's enactment. For all these reasons, this Court should decline to adopt the analysis suggested by the Fifth Circuit.

II. The Fifth Circuit's approach would frustrate the important limitations this Court and Congress have placed on private securities suits, including on private claims for aiding and abetting.

Among other things, the Fifth Circuit's reading would allow class action plaintiffs to assert aiding and abetting claims like the ones in this litigation in state court, even though such claims would clearly be barred under federal law. *Stoneridge*, 552 U.S. at 162–63. In its experience, DRI believes that the consequences of such a rule would be grave—and that they are precisely the kinds of consequences that motivated Congress to adopt SLUSA in the first place.

A. This Court and Congress have carefully circumscribed securities class actions to prevent abusive practices that expose U.S. markets to unacceptable risks.

As this Court has noted, "[t]he magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated." *Dabit*, 547 U.S. at 78. Since their enactment in the 1930s, the Securities Acts have "anchored" the federal regulation of these "vital elements of our economy." *Ibid.* Accordingly, this Court has adopted a "broad interpretation" of the SEC's enforcement powers under Section 10(b). *Id.* at 85.

By contrast, this Court has taken a narrow approach to the judicially implied private right of action. See, *e.g.*, *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 748–49 (limitations on standing); *Central Bank*, 511 U.S. at 179–80 (limitations

on aiding and abetting liability where no fraud is alleged); *Stoneridge*, 552 U.S. at 165–66 (limitations on aiding and abetting liability where fraud is alleged). And when Congress passed the PSLRA in 1995, it followed the same cautious, federally oriented approach by (1) adding new limits on the private right of action, and (2) expanding and clarifying the scope of the SEC's authority to protect the integrity of the national securities markets.

There is good reason for such caution. In *Central Bank*, this Court recognized that "litigation under Rule 10b-5 presents a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general."[3] 511 U.S. at 188–89 (citing *Blue Chip Stamps*, 421 U.S. at 739; *Virginia Bankshares*, 501 U.S. at 1105; S. Rep. No. 73-792, at 21 (1934) (attorney's fee provision is protection against strike suits)). That is in part because "in the field of federal securities laws governing disclosure of information, even a complaint which by objective standards may have very little chance of success at trial has a settlement value to the plaintiff out of any proportion to its prospect of success," for "[t]he very pendency of the lawsuit may frustrate or delay normal business activity of the defendant which is totally unrelated to the lawsuit." *Blue Chip Stamps*, 421 U.S. at 740. And the House Report on the PSLRA documented the "ways in which the class-action de-

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[3] When evaluating attempts to extend the scope of private securities enforcement actions, this Court has long "considered [it] appropriate to examine" the "practical consequences of [such] an expansion." *Stoneridge*, 552 U.S. at 163 (citing *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U.S. 1083, 1104–05 (1991); *Blue Chip Stamps*, 421 U.S. at 737).

vice was being used to injure 'the entire U.S. economy.'" *Dabit*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf. Rep.)). The Report observed that "nuisance filings, targeting of deep-pocket defendants, vexatious discovery requests, and 'manipulation by class action lawyers of the clients whom they purportedly represent' had become rampant in recent years," and that "these abuses resulted in extortionate settlements, chilled any discussion of issuers' future prospects, and deterred qualified individuals from serving on boards of directors." *Ibid.* (internal quotations omitted).

The PSLRA responded to these abuses in Title I, which is captioned "Reduction of Abusive Litigation." Among other things, Title I limits recoverable damages; imposes new restrictions on the selection of (and compensation for) lead plaintiffs in a class action; authorizes a stay of discovery pending resolution of any motion to dismiss; and imposes heightened pleading standards. *Id.* at 81–82 (citing 15 U.S.C. § 78u-4 and *Dura Pharmals., Inc.* v. *Broudo*, 544 U.S. 336 (2005)). In short, as this Court acknowledged in *Dabit*, Congress's "effort to deter or at least quickly dispose of those suits whose nuisance value outweighs their merits placed special burdens on plaintiffs seeking to bring federal securities fraud class actions." *Ibid.*

To avoid these new burdens, the plaintiffs' bar turned its attention to state court. In the first six months of 1996, following the enactment of the PSLRA, the number of state securities class actions filed in California alone increased fivefold. H.R. Rep. No. 105-640, at 10 (1998); see also SEC, OFFICE OF GENERAL COUNSEL, REPORT TO THE PRESIDENT AND

THE CONGRESS ON THE FIRST YEAR OF PRACTICE UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995, at 84 (1997) (noting the increase in state securities class actions and observing that this "may reflect a migration of weaker cases to state court"); H.R. Rep. No. 105-803, at 14–15 (1998) (Conf. Rep.) (stating that plaintiffs' attorneys were attempting to "circumvent the [PSLRA's] provisions by exploiting differences between Federal and State laws by filing frivolous and speculative lawsuits in State court, where essentially none of the Reform Act's procedural or substantive protections against abusive suits are available").

This shift is no surprise. "'Prior to the passage of the [PSLRA], there was essentially no significant securities class action litigation brought in State court.'" *Dabit,* 547 U.S. at 88 (quoting H.R. Rep. No. 105-803, at 14 (1998) (Conf. Rep.). This was true even though state securities laws permitted private citizens to bring suit on theories that were not allowed under federal law. *Ibid.* ("[W]hile state-law holder claims were theoretically available both before and after the decision in *Blue Chip Stamps,* the actual assertion of such claims by way of class action was virtually unheard of before SLUSA was enacted; respondent and his *amici* have identified only *one* pre-SLUSA case involving a state-law class action asserting holder claims."). "To stem this 'shif[t] from Federal to State courts' and 'prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of the [PSLRA,] * * * Congress enacted SLUSA." *Id.* at 82 (quoting SLUSA §§ 2(2), (5), 112 Stat. 3227).

SLUSA's legislative history reflects Congress's considered judgment that "lawsuits alleging violations that involve securities that are offered nationally belong in Federal court." 144 Cong. Rec. H10771 (daily ed. Oct. 13, 1998) (statement of Rep. Bliley); see also H.R. Rep. No. 105-803, at 13 (1998) (Conf. Rep.) ("this legislation establishes uniform national rules for securities class action litigation involving our national capital markets"). To accomplish this objective, SLUSA targeted the private enforcement mechanism that Congress identified as most prone to abuse: class actions. To prevent SLUSA's substantive objectives from being frustrated through artful pleading, Congress created a broad and flexible definition of "covered class actions" and freely permitted removal to federal court.[4] *Dabit*, 547 U.S. at 83 nn. 6, 8

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[4] The statute states:

> The term 'covered class action' means—
>
> (i) any single lawsuit in which—
>
> (I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or
>
> (II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or
>
> (ii) any group of lawsuits filed in or pending

(quoting SLUSA, 112 Stat. 3230, 3232 (codified at 15 U.S.C. § 78bb(f)(2), (5)). And, as we have already seen, when it defined the kinds of allegations covered by the law, Congress used the "in connection with" language that has been broadly construed by this Court for over forty years. SLUSA, 112 Stat. 3230 (codified as amended at 15 U.S.C. § 78bb(f)(1)); see *supra* at 9. Overall, then, SLUSA reflects Congress's judgment that private securities enforcement must be carefully cabined and that the category of private lawsuits that presents the greatest risk of harming the U.S. securities markets—class actions—should be brought only under federal law.

Congress's reforms have had a positive impact: in 2011, the overall number of securities class action settlements declined by thirty percent to the lowest number since 1999, while the total settlement value—$3.4 billion—represented a seventeen percent increase from prior years, largely due to the participation of institutional plaintiffs like pension funds.[5]

> in the same court and involving common questions of law or fact, in which—
>
> (I) damages are sought on behalf of more than 50 persons; and
>
> (II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

Dabit, 547 U.S. at 83 n.8 (quoting SLUSA, 112 Stat. 3232 (codified at 15 U.S.C. § 78bb(f)(5)(B)).

[5] PRICEWATERHOUSECOOPERS, THE EVER-CHANGING LANDSCAPE OF LITIGATION COMES FULL CIRCLE: 2011 SECURITIES LITIGATION STUDY 22–23 (2012), *available at* http://10b5.pwc.com/PDF/2011_securities_litigation_study_14_interactive.PDF (last visited May 10, 2013).

Since small settlements are often regarded as a sign of nuisance suits, and because the participation of large institutional investors like pension funds (thought to be a bulwark against strike suits) was one of the results Congress sought to achieve in the PSLRA, these trends highlight the enduring nature of Congress's reforms. See Joseph A. Grundfest, *Why Disimply?*, 108 HARV. L. REV. 727, 742–43 (1995) (noting that settlements of less than $2 million suggested that the suits held only a nuisance value); 15 U.S.C. §§ 77z-1(a)(3)(B), 78u-4(a)(3)(B) (creating a rebuttable presumption that the class member with the largest financial interest is the most adequate lead plaintiff); H.R. Rep. No. 104-369, at 34 (1995) (observing that this presumption is intended to "encourage institutional investors to take a more active role in securities class action lawsuits."). By opening the door to expanded securities-related litigation in state court, the Fifth Circuit's decision threatens to undo much of what Congress accomplished in the PSLRA and SLUSA.

B. Private lawsuits for aiding and abetting securities-related misstatements—which would clearly increase under the Fifth Circuit's approach—are particularly harmful to U.S. capital markets.

If SLUSA preclusion is relaxed—as it would be under the Fifth Circuit's approach—one of the inevitable consequences would be an increase in private state law class actions against secondary actors like law firms, auditors, and other professional services firms. This would thwart one of the most important limitations on private securities litigation: the prohibition on claims for aiding and abetting.

1. This Court first addressed this issue in *Central Bank*. "Since 1966, numerous [lower] courts" had held that private litigants could sue those who aided and abetted another actor who violated the securities laws. *Central Bank*, 511 U.S. at 169-70. Squarely reviewing the issue for the first time, the Court concluded that private civil liability for aiding and abetting was not supported by the text of section 10(b). *Id.* at 177–78.

In reaching this result, the Court went out of its way to observe that "[s]econdary liability for aiders and abettors exacts costs that may disserve the goals of fair dealing and efficiency in the securities markets." *Id.* at 188. Securities litigation is "an area that demands certainty and predictability," but because "the rules for determining aiding and abetting liability are unclear, * * * decisions [are likely to be] made on an ad hoc basis, offering little predictive value to those who provide services to participants in the securities business." *Ibid.* (internal quotations and citations omitted.). The Court concluded that "'[s]uch a shifting and highly fact-oriented disposition of the issue of who may [be liable for] a damages claim for violation of Rule 10b-5'" is not a "'satisfactory basis for a rule of liability imposed on the conduct of business transactions.'" *Ibid.* (quoting *Blue Chip Stamps*, 421 U.S. at 755).

The Court identified many of the same hazards in aiding and abetting liability that led Congress to enact PSLRA's limits on securities class actions the following year. "Because of the uncertainty of the governing rules, entities subject to secondary liability as aiders and abettors may find it prudent and necessary, as a business judgment, to abandon substantial

defenses and to pay settlements in order to avoid the expense and risk of going to trial." *Id.* at 189. "This uncertainty and excessive litigation can have ripple effects" on "newer and smaller companies" that "may find it difficult to obtain advice from professionals"—like lawyers and auditors—who may fear "that a newer or smaller company may not survive and that business failure would generate securities litigation against the professional, among others." *Ibid.* Perversely, these "increased costs incurred by professionals because of the litigation and settlement costs under 10b-5 may be passed on to their client companies, and in turn incurred by the company's investors, the intended beneficiaries of the statute." *Ibid.* (citing Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 DUKE L.J. 945, 948–66 (1993)). Finally, the Court acknowledged that even meritless suits imposed a significant financial burden on secondary actors, noting that "[l]itigation under 10b-5 * * * requires secondary actors to expend large sums even for pretrial defense and the negotiation of settlements," which in the case of major accounting firms resulted in the expenditure of "$8 in legal fees for every $1 paid in claims." *Ibid.* (citing 138 Cong. Rec. S12605 (Aug. 12, 1992) (remarks of Sen. Sanford).

2. Fourteen years later, in *Stoneridge*, the Court rejected an attempt to resurrect private aider and abettor liability and affirmed that Congress, in a "specific response to *Central Bank*," had subsequently "amended the securities laws to provide for limited coverage of aiders and abettors * * * in actions brought by the SEC *but not by private parties*." *Stoneridge*, 552 U.S. at 162 (citing 15 U.S.C. § 78t(e))

(emphasis added). Recognizing private aider and abettor liability "would undermine Congress' determination that this class of defendants should be pursued by the SEC and not by private litigants," in violation of the principle that "[t]he express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.'" *Id.* at 162–63 (quoting *Alexander* v. *Sandoval,* 532 U.S. 275, 290 (2001)).

Once again, the *Stoneridge* court went out of its way to identify the "practical consequences" of a contrary rule, noting that private civil liability for aiding and abetting securities fraud "would expose a new class of defendants"—such as lawyers, auditors, and otherwise innocent business partners—to the risk of "extensive discovery and the potential for uncertainty and disruption," which "allow[s] plaintiffs with weak claims to extort settlements from innocent companies." *Id.* at 163-64. These secondary actors would, in turn, likely pass their skyrocketing legal costs on to their clients and business partners, "rais[ing] the cost of being a publicly traded company under our law and shift[ing] securities offerings away from domestic capital markets." *Id.* at 164.

3. This Court's concerns about the negative effects of aider and abettor liability on the global competitiveness of the U.S. capital markets are as valid today as they were in 2005. One report commissioned by Senator Charles Schumer and New York City Mayor Michael Bloomberg found that "the high legal cost of doing business in the US financial services industry is of real concern to corporate executives," that "propensity toward legal action was the predominant problem," and that 85% of CEOs be-

lieved that London was preferable to New York in this regard. MCKINSEY & COMPANY, SUSTAINING NEW YORK'S AND THE US'S GLOBAL FINANCIAL SERVICES LEADERSHIP 75 (2007).[6] And in a survey of 334 senior executives of overseas companies, one out of three companies that had considered going public in the U.S. indicated that "litigation [was] an 'extremely important' factor in their decision." THE FINANCIAL SERVICES FORUM, 2007 GLOBAL CAPITAL MARKETS SURVEY 6–8 (2007).[7] Perhaps more tellingly, the same survey showed that "nine out of 10 companies who de-listed from a U.S. exchange" from 2003 to 2007 "said that the litigation environment played some role in that decision." *Ibid.* In short, the U.S. securities markets are already losing a competitive edge because of the high costs of litigation.

The Fifth Circuit's decision only exacerbates this already-serious problem—particularly because of its impact on aiding and abetting claims. Especially where the primary violator has become judgment proof, plaintiffs often attempt to shift their losses entirely to the third parties that may have provided professional services before the entity's collapse. These third parties—often accounting firms or law firms—generally will not have received any direct profit from the fraudulent schemes, outside their ordinary professional fees. Still, the availability of aiding and abetting claims transforms these entities into insurers for their clients and exposes them to the risk

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[6] *Available at* http://www.nyc.gov/html/om/pdf/ny_report_final.pdf (last visited May 10, 2013).

[7] *Available at* http://www.financialservicesforum.org/images/stories/20071211_global_capital__markets_survey.pdf (last visited May 10, 2013).

of massive liability. That risk may force such firms to settle the claims against them, regardless of merit. And the costs of those settlements—and of the skyrocketing cost of defending such actions—will inevitably be passed on to clients and thus raise the cost of participating in the U.S. capital markets.

Based on its members' experience in representing lawyers and accounting firms that have been sued in securities class actions, DRI is well aware of the devastating effect that even meritless lawsuits can have on these professionals and the businesses they serve. Any expansion of such third-party litigation in state court—free from the limitations imposed by this Court's cases—would frustrate Congress's judgment that aiding and abetting claims are best investigated and prosecuted by the SEC, not by private parties. See 15 U.S.C. § 78t(e).

III. The risks and costs created by lawsuits like the ones at issue here are unnecessary because state and federal agencies already possess broad authority to prosecute both primary and secondary liability for securities-related misrepresentations.

The allegations here show the hazards of interpreting SLUSA narrowly: one of the underlying complaints alleges that Stanford's lawyers aided and abetted securities fraud by "allegedly misrepresent[ing] *to the SEC* the Commission's ability to exercise its oversight over Stanford and SIB," and "telling *the SEC* that it could not investigate the operations of Stanford and SIB." Pet. App. at 42 (emphasis added). Still, the Fifth Circuit refused to apply SLUSA, concluding that even these representa-

tions were "not more than tangentially related to the purchase or sale of covered securities." *Roland* v. *Green*, 675 F.3d. 503, 524 (5th Cir. 2012). The Court based this conclusion in part on the fact that the misrepresentations the plaintiffs ultimately received included "a host of things" in addition to any references to "instruments that might be SLUSA-covered securities." *Ibid.*

There is simply nothing in the text or history of SLUSA to indicate that Congress intended to permit a private party to bring a state court class action against a secondary actor based on alleged misrepresentations made to the SEC, which already has broad powers to discipline attorneys who fail to disclose material violations of the securities laws when practicing before the Commission. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 § 307, 15 U.S.C. § 7245 (2006); 17 C.F.R. § 205.3 (2011).[8] Such lawsuits are an affront to the regulatory system Congress created to police those very abuses. See, *e.g.*, *Buckman* v. *Plaintiffs' Legal Comm.*, 531 U.S. 341, 347–48 (2001) (holding state claims based on alleged fraud on the FDA preempted).

As one independent report concluded, "[t]he United States has the toughest administrative enforcement of securities law in the world." COMMITTEE ON CAPITAL MARKETS REGULATION, INTERIM REPORT 11

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[8] See also Implementation of Standards of Professional Conduct for Attorneys, 68 Fed. Reg. 6296-01 (Feb. 6, 2003), *available at* http://www.sec.gov/rules/final/33-8185.htm (last visited May 10, 2013).

(2006).[9] Congress gave the SEC express authority to pursue aiders and abettors in the PSLRA (15 U.S.C. § 78t(e)), which the SEC has used to prosecute lawyers who knowingly helped their clients to commit securities fraud. See, *e.g.*, SEC Litigation Release No. 22352, SEC Charges Attorney and Clients in Scheme to Unlawfully Sell Billions of Penny-Stock Shares (May 1, 2012) (noting that the SEC's complaint charged an attorney with violating, or aiding and abetting a violation of, Section 5 of the Securities Act).[10]

Writing in 2008, this Court observed that the SEC's civil and criminal enforcement power for secondary actors "is not toothless." *Stoneridge*, 552 U.S. at 166. This is even more true today than it was then, with the significant expansion of the SEC's enforcement authority under the recent Dodd-Frank Act. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922(a), 124 Stat. 1376 (2010); Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 34,300 (June 13, 2011).[11] In 2011, the SEC's Division

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[9] *Available at* http://www.law.du.edu/images/uploads/corporate-governance/empirical-committee-capital-markets-regulation.pdf (last visited May 10, 2013).

[10] *Available at* http://www.sec.gov/litigation/litreleases/2012/lr22352.htm (last visited May 10, 2013).

[11] The SEC's Director of Enforcement has noted that the Dodd-Frank whistleblower provisions may play a particularly important role in deterring aiding and abetting violations because, by making it less likely that material violations will remain hidden indefinitely, they provide an added incentive for secondary actors like attorneys and auditors to investigate and fully disclose any suspicions of fraud. See Robert S. Khuzami, Remarks to Criminal Law Group of the UJA—Federation of New York

of Enforcement achieved "a record performance," filing 735 enforcement actions, opening 933 investigations, and obtaining $2.8 billion in penalties and disgorgement. SEC, PERFORMANCE AND ACCOUNTABILITY REPORT, FISCAL YEAR 2011, at 12-13 (2011).[12] And the SEC's new Office of the Whistleblower, created under Dodd-Frank, received 334 whistleblower tips in the first two months of its full-fledged operation. SEC, ANNUAL REPORT ON THE DODD-FRANK WHISTLEBLOWER PROGRAM, FISCAL YEAR 2011, at 5 (2011).[13] All of this federal enforcement authority is, of course, in addition to the numerous "state securities laws [that] permit state authorities to seek fines and restitution from aiders and abettors." *Stoneridge*, 552 U.S. at 166 (citing Del. Code Ann., Tit. 6, § 7325 (2005)).

In short, the reforms in the PSLRA, SLUSA, Sarbanes-Oxley, and Dodd-Frank represent Congress's considered judgment that government agencies, not private class action plaintiffs, are the appropriate enforcers for the kind of securities-related fraud alleged in this case. This Court should not adopt any reading of SLUSA that undermines that judgment.

CONCLUSION

The Fifth Circuit's decision below is inconsistent with the statutory language. It is also unwise and

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(June 1, 2011), *available at* http://www.sec.gov/news/speech/2011/spch060111rk.htm (last visited May 10, 2013).

[12] *Available at* http://www.sec.gov/about/secpar/secpar2011.pdf (last visited May 10, 2013).

[13] *Available at* http://www.sec.gov/about/offices/owb/whistleblower-annual-report-2011.pdf (last visited May 10, 2013).

unnecessary. DRI respectfully urges this Court to reverse the decision below.

Respectfully submitted.

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AMICUS CURIAE BRIEF

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Supreme Court of the United States

WILLIS OF COLORADO INCORPORATED, *et al.*,

Petitioners,

v.

SAMUEL TROICE, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICUS CURIAE* CAUSEWAY CAPITAL MANAGEMENT LLC IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Causeway Capital Management LLC ("Causeway") is an investment adviser registered with the SEC under the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq.* Causeway is independently owned, manages $17.3 billion in assets (at March 31, 2013), and specializes in managing global, international, emerging market and absolute return equities. Causeway's clients include corporate, public, and Taft-Hartley pension plans, endowments, foundations, corporations, and mutual funds. The mutual funds managed by *amicus curiae* are investment companies registered under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.* Shares of registered investment companies are "covered securities" within the meaning of the Securities Litigation Uniform Standards Act of 1998, Pub. L. 105-353, 112 Stat. 3227 ("SLUSA"). *See* 15 U.S.C. §§ 77p(f)(3), 78bb(f)(5)(E).

Amicus curiae has a substantial interest in the issue discussed in this brief because it is relevant to a pending case in which it is a defendant. *Wodka v. Causeway Capital Management LLC, et al.*, BC463623, Superior Court of the State of California, County of Los Angeles.

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1. Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that counsel for *amicus* authored this brief in its entirety. No person or entity other than *amicus*, its counsel, or its insurer made a monetary contribution to its preparation or submission. Letters of consent from both parties have been filed with the Clerk of the Court pursuant to Supreme Court Rule 37.3.

SUMMARY OF THE ARGUMENT

SLUSA provides that "[n]o [state law] covered class action . . . may be maintained in any State or Federal court by any private party alleging . . . a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A).

The case comes to this Court on the premise that the complaint at issue pleads a covered state law class action and alleges "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security. Thus, the question is simply how to interpret SLUSA's command that no such "covered class action . . . may be maintained." 15 U.S.C. § 78bb(f)(1). The answer seems clear: The term "action" typically refers to an entire case. SLUSA's prohibition on the maintenance of "covered class actions" thus means that "SLUSA precludes an entire action, as opposed to specific claims, if the complaint contains any covered allegations." *Atkinson v. Morgan Asset Mgmt., Inc.*, 658 F.3d 549, 555 (6th Cir. 2011).

This straightforward interpretation of the statutory text is fully consistent with *Jones v. Bock*, 549 U.S. 199 (2007). *Jones* held that "action" could be treated as synonymous with "claim" when the term "action" was mere statutory boilerplate. *Id.* at 220-24. That is plainly not the case here: SLUSA contains a detailed and critically important definition of "covered class action." Further, SLUSA is in part a removal statute, a type of statute where the term "action" ordinarily refers to the entire case. The statutory text also trumps relevant policy considerations, which on balance support the more natural reading of the statute in any event.

ARGUMENT

Once a plaintiff pleads a covered state law class action alleging "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security, SLUSA's plain language requires dismissal of the "covered class action" in its entirety.[2]

Throughout its text, SLUSA consistently refers to "actions" rather than to individual "claims." *See* 15 U.S.C. §§ 78bb(f)(1); 78bb(f)(2); 78bb(f)(5)(C). And "action" is part of the defined term "covered class action" that was carefully crafted by Congress. *See* 15 U.S.C. §§ 78bb(f)(5)(B)(i)-(ii). Thus, when Congress stated emphatically that "[n]o covered class action ... may be maintained," its intent was clear that the entire case be dismissed. 15 U.S.C. § 78bb(f)(1). *Cf. Tolbert v. Stevenson*, 635 F.3d 646, 650 (4th Cir. 2011) (the "typical meaning" of the term "action" is "an entire case or suit").

This straightforward reading of SLUSA is dispositive. *See Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 177 (1994) ("We reach the uncontroversial conclusion, accepted even by those courts recognizing a § 10(b) aiding and abetting cause of action, that the text of the 1934 Act does not itself reach those who aid and abet a § 10(b) violation. Unlike those courts, however, we think that conclusion resolves the case.").

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2. "[U]nlike the dismissal of a complaint, which can ordinarily be amended, the dismissal of the entire action ends the litigation ... whether the suit is dismissed with prejudice or without prejudice." *Am. Nat. Bank and Trust Co. of Chi. v. Equitable Life Assur. Soc'y*, 406 F.3d 867, 874-75 (7th Cir. 2005) (citations and internal quotation marks omitted).

Causeway's interpretation of the statutory text also comports with this Court's most recent pronouncements concerning SLUSA. *See, e.g., Kircher v. Putnam Funds Trust*, 547 U.S. 633, 635-38, 644 n.12 (2006) (SLUSA's purpose is "to preclude certain vexing state-law class ***actions***") (emphasis added); *id.* at 643-44 (describing SLUSA as "preclud[ing]" certain "cases"); *id.* at 644 n.12 (SLUSA "avails a defendant of a federal forum in contemplation . . . ***of termination of the proceedings altogether***") (emphasis added); Thus, "[i]f the ***action is precluded***, neither the District Court nor the state court may entertain ***it, and the proper course is to dismiss***." *Id.*, at 644 (emphasis added).

Notwithstanding SLUSA's plain language, lower court authority is inconsistent. At the appellate level, *Atkinson v. Morgan Asset Mgmt.*, 658 F.3d at 555-56 and *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 535 F.3d 325, 341-42 (5th Cir. 2008), are consistent with Causeway's view.

But even courts that have rejected the view of SLUSA advocated by the *amicus* have effectively acknowledged that it is the natural reading of the statute. *See Dabit v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 395 F.3d 25, 47 (2d Cir. 2005) (SLUSA's language "might be read to suggest that where a single complaint contains claims that include allegations triggering preemption and other claims that do not, SLUSA prohibits maintenance of the entire action"), *rev'd*, 547 U.S. 71 (2006); *Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294, 305 (3d Cir. 2005) (SLUSA "does not preempt particular 'claims' or 'counts' but rather preempts ['covered class actions'], 15 U.S.C. § 78bb(f)(1), suggesting that if any claims alleged in a

covered class action are preempted, the entire action must be dismissed"). *Accord In re Lord Abbett Mut. Funds Fee Litig.*, 463 F. Supp. 2d 505, 511-13 (D.N.J. 2006) (following *Rowinski* and adopting "entire action" interpretation of the statute), *rev'd*, 553 F.3d 248 (3d Cir. 2009).

Those courts have nonetheless offered three unpersuasive reasons for deviating from the statutory text: (1) a purported inconsistency with *Jones v. Bock*, 549 U.S. 199 (2007); (2) SLUSA's use of "maintain" rather than "filed"; and (3) policy considerations. None overcomes the plain statutory text.

A. *Jones v. Bock* Is Inapposite

Causeway's interpretation of the statute is fully consistent with *Jones*. *Jones* interpreted the Prison Litigation Reform Act ("PLRA"). However, *Jones* only

> departed from the plain meaning of "action" interpreting a particular PLRA provision, 42 U.S.C. § 1997e(a). And the Court arrived at its conclusion that "action" meant "claim" in that provision only because it found that the specific phrasing of § 1997e(a) – "no action shall be brought" was "boilerplate language" borrowed from statutes of limitations and other similar contexts in which "action" always means "claim."

Tolbert v. Stevenson, 635 F.3d at 652.

SLUSA differs fundamentally from the PLRA. It contains much more than (in the words of *Jones*) a mere

"statutory reference[] to an 'action'" that may be regarded as "boilerplate language." SLUSA's ***centerpiece*** is a detailed statutory definition of a "covered class action," 15 U.S.C. § 78bb(f)(5)(B)(i)-(ii), that encompasses "any ***single lawsuit***" or "any ***group of lawsuits***" that meets certain criteria. (emphasis added). *See In re Lord Abbett*, 463 F. Supp. 2d at 511-12 (discussing statutory definition). This statutory focus on a single lawsuit or group of lawsuits that meets carefully defined additional criteria belies any suggestion that Congress used the terms "action" and "covered class action" haphazardly. *See also* 15 U.S.C. § 78bb(f)(2) (providing for removal of covered "action"); 15 U.S.C. § 78bb(f)(5)(C) (excepting from definition of "covered class action" "an ***exclusively*** derivative action") (emphasis added). It is patently unreasonable to treat these carefully defined terms as synonymous with "claim."

Statutory context buttresses this conclusion. SLUSA is, in part, a special removal statute and (in contrast to the statute of limitations context mentioned in *Jones*), "[u]nder removal practice generally, the entire lawsuit is removable or not removable, not merely the claims against particular defendants." *Lowery v. Ala. Power Co.*, 483 F.3d 1184, 1197 (11th Cir. 2007) (internal citations and quotation marks omitted). *See also City of Chi. v. Int'l College of Surgeons*, 522 U.S. 156, 166-67 (1997).

B. SLUSA's Prohibition Against Maintenance of a Covered Class Action Prevents Efforts to Continue Part of the Litigation

As this Court has explained, "'maintain' in reference to a legal action is often read as 'bring' or 'file'." *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 695

(2003). Thus, "SLUSA prohibits a claimant from ***filing*** a class action" that meets the statutory criteria. *Segal v. Fifth Third Bank, N.A.*, 581 F.3d 305, 309 (6th Cir. 2009) (emphasis added). And in light of "Congressional intent that SLUSA be interpreted broadly," *In re Enron Corp.*, 535 F.3d at 341, SLUSA preclusion is not limited to the time of commencement but may "be considered at any time." *Id.*

Despite this Court's guidance, the Ninth Circuit has suggested that

> By using the word "maintained" rather than "filed," the language focuses on the content of the action as it goes forward, not as it began, and so does not require that a federal court dismiss an entire action where only some claims are precluded by SLUSA.

Proctor v. Vishay Intertechnology Inc., 584 F.3d 1208, 1227 (9th Cir. 2009). But even if, in keeping with the Ninth Circuit's view, "maintenance" means no more than "continuation," in this context the prohibition against the "maint[enance]" of covered class actions, 15 U.S.C. § 78bb(f)(1), unquestionably requires dismissal of such actions. Declaring certain claims preempted but still permitting a plaintiff to continue the action by proceeding with other allegations in the complaint is precisely what the statute forbids. *See, e.g., Riley v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 292 F.3d 1334, 1341 (11th Cir. 2002) (in SLUSA, "Congress . . . requir[ed] the immediate dismissal of 'covered lawsuits'"); *Smallwood v. Gallardo*, 275 U.S. 56, 61 (1927) ("To maintain a suit is to uphold, continue on foot and keep from collapse a

suit already begun." Maintaining a suit also includes commencing a new suit "at a later day.").

Accordingly, *In re Enron* rejected the plaintiffs' argument that it would be "absurd" to apply SLUSA in a way that terminated their claims (individual claims brought exclusively under state law that ordinarily would not trigger SLUSA preclusion) merely because of the particular (coordinated) manner in which the actions had proceeded. 535 F.3d at 341-42. The Fifth Circuit observed that the relevant inquiry was not whether the *Enron* plaintiffs ***could*** have avoided SLUSA by proceeding in a different manner but "whether they ***did*** in fact avoid SLUSA." *Id.* at 342 n.15. Plaintiffs "cho[se] to proceed as a single action" and "must...face the consequences" of their "contribution to SLUSA preemption." *Id.* at 342. Therefore, the district court was found to have properly dismissed all of plaintiffs' claims with prejudice. *Id.*

C. Policy Considerations Favor Causeway's Interpretation and Cannot Trump the Better Reading of the Statutory Text

Finally, the Third Circuit rested its holding in *Lord Abbett* on policy grounds. It believed that construing SLUSA to require dismissal of entire actions would have a "punitive effect" and that it would encourage plaintiffs to bring "two or more actions in order to avoid having all their claims dismissed." *In re Lord Abbett*, 553 F.3d at 255. The Third Circuit "struggle[d]" to see how Causeway's interpretation would advance the statutory purposes. *Id.* Based on these policy considerations, the Third Circuit declined to adhere to the plain reading of SLUSA articulated in *Rowinski* because it did not believe it was "compel[led]," *id.* at 255, 256, or "mandate[d]," *id.*

at 256, 257, to do so. The Second and Ninth Circuits have taken similar approaches.

These courts erred by requiring defendants to do more than demonstrate theirs is the more persuasive interpretation of the statutory text. *See, e.g., Astoria Fed. Sav. and Loan Ass'n v. Solimino*, 501 U.S. 104 (1991) (seldom appropriate for court to impose clear statement requirement); *Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 558 (2005) ("[I]t is just as important not to adopt an artificial construction that is narrower than what the text provides. No sound canon of interpretation requires Congress to speak with extraordinary clarity.").[3]

Courts that have required more have seemingly forgotten that "[p]olicy considerations cannot override our interpretation of the text and structure of the Act." *Central Bank*, 511 U.S. at 188.

The policy analysis exemplified by the *Lord Abbett* opinion also is erroneous on its own terms.

Other courts have answered the Third Circuit's misplaced concern about SLUSA's "punitive effect" on class action plaintiffs. Because the "plaintiff is the master of the complaint . . . he must take responsibility for the

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3. The Second Circuit invoked a presumption against preemption in support of its artificial narrowing construction of SLUSA. *Dabit*, 395 F.3d at 46-47. But this Court's opinion reversing the Second Circuit rejected "[a] narrow reading" of SLUSA, *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 86 (2006), and ruled the ordinary presumption against preemption inapplicable given that "SLUSA does not actually preempt any state cause of action." *Dabit*, 547 U.S. at 87. *See also In re Lord Abbett*, 463 F. Supp. 2d at 14.

allegations included in it. SLUSA may be unforgiving when it applies, but it details in clear language when that is so." *Segal*, 581 F.3d at 312 (internal quotation marks omitted).

The Third Circuit's unexplained assertion that plaintiffs can easily circumvent SLUSA by filing multiple actions is immaterial and dubious given that SLUSA's definition of a "covered class action" encompasses certain groups of lawsuits, *see* 15 U.S.C. §§ 78bb(f)(5)(B), and the fact that there are various procedural devices for consolidating related cases before a single judge. *See, e.g.*, Fed. R. Civ. P. 42(a); 28 U.S.C. § 1404. A plaintiff who splits his causes of action in this manner may also run the risk of claim preclusion. *See, e.g., Cemer v. Marathon Oil Co.*, 583 F.2d 830 (6th Cir. 1978).

Finally, the Third Circuit erroneously discounted two important policy considerations.

First, the typical SLUSA case is filed in state court and then removed to federal court; allowing plaintiffs to argue that the complaint contains some valid claims or affording plaintiffs multiple opportunities to plead their claims will cause additional delay and therefore contravenes "[t]he policy of Congress" that "opposes interruption of the litigation of the merits of a removed cause by prolonged litigation of questions of jurisdiction." *Kircher*, 547 U.S. at 640 (citation and internal quotation marks omitted).

Second, securities class actions present "a danger of vexatiousness different in degree and in kind from that which accompanies litigation in general." *Dabit*, 547 U.S. at 80 (citation and internal quotation marks

omitted). Plaintiffs therefore should be deterred from putting defendants to the effort and expense of defending claims triggering SLUSA preclusion. *Cf. Dabit*, 547 U.S. at 82 (Private Securities Litigation Reform Act of 1995 sought to "deter or at least quickly dispose of" disfavored lawsuits). There is no deterrence if plaintiffs are free to simply continue with their lawsuits after a court dismisses individual SLUSA precluded claims.

CONCLUSION

For the foregoing reasons, the *amicus curiae* respectfully submits that the statutory language of SLUSA mandates that, when a complaint contains one or more SLUSA-triggering allegations, the action must be dismissed in its entirety. Accordingly, the *amicus curiae* urges the Court to reverse the judgment below on this basis.

Respectfully submitted,

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May 10, 2013

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AMICUS CURIAE BRIEF

Nos. 12-79, 12-86 and 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP,

Petitioner,

and

WILLIS OF COLORADO INCORPORATED, BOWEN, MICLETTE & BRITT, INC. AND SEI INVESTMENTS COMPANY,

Petitioners,

and

PROSKAUER ROSE LLP,

Petitioner,

v.

SAMUEL TROICE, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICUS CURIAE* THE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF AMICUS CURIAE NABT[1]

The National Association of Bankruptcy Trustees (NABT) is a nonprofit professional association formed in 1982 to address the needs of chapter 7 bankruptcy trustees and promote the effectiveness of the bankruptcy system as a whole. The NABT is committed to improving the administration of bankruptcy by promoting professionalism, education, and the open exchange of ideas among its members and other members in the bankruptcy community. Chapter 7 trustees are fiduciaries charged with administering chapter 7 bankruptcy cases and upholding the integrity of those proceedings. A chapter 7 trustee is appointed as a disinterested person to review the bankruptcy petition in a chapter 7 liquidation proceeding and to schedule and determine whether the debtor has any non-exempt assets available for distribution to creditors. The trustee must be independent and works primarily for the benefit of the debtor's unsecured creditors. The trustee's primary goal is to liquidate assets for the benefit of creditors. In a majority of chapter 7 cases, there are no assets available for liquidation; however, the trustee is responsible for investigating the debtor's affairs, examining the debtor under oath, and submitting reports to the bankruptcy court and the Office of the United States Trustee, a division of the United States Department of Justice. Trustees have a duty to close a bankruptcy estate

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1. Undersigned counsel authored this brief pro bono, and no party's counsel authored this brief in whole or in part. No party or party's counsel made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the NABT, its members, or its counsel has made any such monetary contribution. All parties have consented to the filing of this brief.

as expeditiously as is compatible with the best interests of the parties. 11 U.S.C. § 704(a)(1).

Trustees are private citizens appointed and supervised by the Office of the United States Trustee to administer bankruptcy cases under chapter 7 of the United States Bankruptcy Code. There are approximately 1,200 chapter 7 trustees who are currently receiving new cases, a majority of which are NABT members. Chapter 7 trustees collectively administer over one million cases annually. Chapter 7 trustees are uniquely qualified to administer assets of the bankruptcy estate. Trustees are independent, dedicated professionals who place their personal assets at risk with each bankruptcy case they administer. They are familiar with the bankruptcy process and have a depth of experience relating to the disposition of estate assets and in recovering those assets for the estate.

Chapter 7 trustees frequently serve as trustees over liquidating or litigation trusts that are formed as part of confirmed chapter 11 plans. Liquidating or litigation trusts are used routinely in chapter 11 cases to facilitate the administration of the bankruptcy estate in the best interest of all parties. The trustee's duties include prosecuting claims that are held by the trust for which the creditors are beneficiaries. The ability of bankruptcy trustees to exercise their duties is an issue of federal importance because litigation trusts are essential to the administration of bankruptcy proceedings and in moving the bankruptcy forward without waiting for resolution of those claims. Claims transferred to bankruptcy litigation trusts can be significant and complex, frequently involving allegations of fraud. This Court's interpretation of SLUSA, therefore, bears directly on a litigation trustee's ability to prosecute such fraud claims.

Respondents are victims of an international Ponzi scheme directed by Allen Stanford and various affiliated entities. Among those entities was Stanford International Bank, Ltd. (SIB). In connection with the scheme, Respondents allege that brokers induced them to invest in certain SIB certificates of deposit based on false promises of above-market returns and misrepresentations that SIB, the bank issuing the CDs, was a secure company invested in safe, liquid investments. Respondents also assert claims against certain lawyers who assisted Stanford in evading regulatory oversight. Contrary to SIB's false representations, SIB had been using new CD sales proceeds to make interest and redemption payments on pre-existing CDs because it did not have sufficient assets, reserves and investments to cover its liabilities. Thus, the CDs were not good investments and did not yield the promised returns. The CDs were also non-covered investments, because they were not nationally traded, nor were they issued by a registered investment company.

These consolidated cases involve questions regarding the scope and application of the Securities Litigation Uniform Standards Act of 1998 (SLUSA), Pub. L. No. 105-353, 112 Stat. 3227, which bars certain state law class actions alleging a misrepresentation in connection with the purchase or sale of a covered security, as defined by the statute. On review is the Fifth Circuit's ruling that SLUSA does not bar these claims because the complaints do not allege misrepresentations in connection with a transaction in covered securities. Consistent with SLUSA's plain language, its purpose, and its unambiguous distinction between covered and non-covered investments, the Fifth Circuit correctly held SLUSA inapplicable because the fraudulently induced transactions did not involve the purchase or sale of covered securities.

The NABT has an interest in the outcome of this case because an overly restrictive application of SLUSA would limit the ability of bankruptcy trustees to exercise their fiduciary duties, particularly in cases where NABT members are serving as liquidating trustees. An expansion of SLUSA would hamper the ability of bankruptcy trustees to prosecute claims.[2] An overly expansive application of securities laws in the context of a Ponzi scheme would also detrimentally affect litigation trusts through section 546(e) defenses under the United States Bankruptcy Code or potentially in the direct assertion of a SLUSA defense. Congress enacted SLUSA to close a loophole in federal law that had invited the filing of meritless strike suits in state court. Its purpose is to make federal court the exclusive venue for most securities fraud class actions concerning the purchase or sale of securities traded on the national exchange or that are from a registered company. SLUSA was not meant to apply to cases concerning fraud in connection with other types of investments. Moreover, it certainly was not intended to apply to cases involving Ponzi schemes where the underlying transactions were not in covered securities. Accordingly, the NABT urges the Court to affirm the Fifth Circuit's decision, which correctly holds these claims do not implicate SLUSA's preclusion provision.

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2. Although NABT believes that actions brought by a bankruptcy trustee, as a fiduciary, are not class actions and therefore not subject to SLUSA's preclusion provisions, *see LaSala v. Bordier et Cie*, 519 F.3d 121, 134 (3d Cir. 2008) (SLUSA not intended to reach liquidating trustee), some courts have applied SLUSA to a trustee's claims, *see LaSala v. UBS*, AG, 510 F.Supp.2d 213, 236 (S.D.N.Y. 2007) (SLUSA applied to liquidating trust with more than 50 beneficiaries). Thus, this Court's ruling is important to bankruptcy trustees because courts in certain jurisdictions have held SLUSA applicable to a trustee's claims.

SUMMARY OF ARGUMENT[3]

Contrary to Petitioners' framing of the question presented, the complaints in these consolidated cases do not allege that a covered security was purchased, sold or held in connection with the fraud. They allege misrepresentations that the non-covered certificates of deposit purchased by the fraud victims were issued by a bank – SIB – that had a well-balanced global portfolio of safe, liquid investments. The victims were also induced by the promise of above-market returns on the CDs. The alleged conduct does not involve the victims' purchase of any covered securities; it involves their purchase of non-covered CDs, which were simple debt instruments redeemable by purchasers. The CDs guaranteed a fixed interest rate that was not tied to the performance of SIB's portfolio. The alleged conduct also does not include any misrepresentation that the CDs themselves were covered securities, or that the victims would otherwise be purchasing covered securities. Thus, the fraud victims did not purchase covered securities, *nor were they told* they were purchasing covered securities.

Instead, victims were falsely assured that the CDs they purchased were issued by a company with a well-balanced portfolio of "highly marketable securities issued by stable national governments, strong multinational companies, and major international banks." J.A. 444 (Proskauer Compl. ¶ 41). Petitioners ask the Court to infer that these statements refer to "covered securities" within SLUSA's definition. First, to arrive at this conclusion

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3. NABT adopts and incorporates herein Respondents' Statement of the Case.

requires the Court to impute facts that are not expressly alleged. Second, even assuming the complaints allege misrepresentations as to SIB's own investment in covered securities, the allegations still fail to implicate SLUSA because there is no allegation that any covered securities were actually purchased or sold in connection with SIB's portfolio, and the victims themselves were not induced to purchase any covered securities. *See* Chadbourne Br. 30 (covered securities purportedly referenced by SIB were "non-existent"). Petitioners' proposed application of SLUSA stretches the statute's language beyond its reasonable limits, imputes allegations in the complaints that are simply not there, and undermines the statute's plain distinction between covered and non-covered investments.

Moreover, Petitioners' argument that SLUSA applies because at least one victim probably sold covered securities in order to purchase the bad investments also fails because it is not based on the allegations in the complaints. The alleged misrepresentations were not aimed at defrauding investors of covered securities in their own portfolios. Petitioners' theory is based on the presumption that someone probably sold a covered security in order to fund *his* or *her* investment in the CDs. *See* Proskauer Br. 37-38. Even assuming that were true, the Fifth Circuit correctly held that the connection is too tangential to support applying SLUSA to this action in which the alleged misconduct does not actually target the purchase or sale of covered securities. As noted by the Fifth Circuit, construing SLUSA to depend on the source of funds where the defendant does not target those funds leads to absurd results. Pet. App. 39a n.7. SLUSA does not apply simply because someone may have sold a covered security in order to purchase one of the CDs.

Contrary to SLUSA's plain language and a fair reading of the complaints, Petitioners advance an interpretation of SLUSA that would bar this action based on a potential connection with covered securities that is at best tangential, when the fraudulently induced transaction clearly involved the purchase of non-covered CDs. In so doing, Petitioners' application of SLUSA conflicts with the statute's express language, which limits SLUSA's scope to fraud in connection with covered securities. Such preclusive effect could have far-reaching and unintended consequences, including a disparate impact on claims brought by bankruptcy trustees, which often involve fraud, when trustees already face countless obstacles in exercising their fiduciary duties in connection with the efficient and effective administration of bankruptcy estates. Accordingly, this Court should reject Petitioner's interpretation of SLUSA and affirm the Fifth Circuit's ruling that the complaints do not allege a misrepresentation in connection with the purchase or sale of a covered security.

ARGUMENT

I. PETITIONERS' INTERPRETATION CANNOT BE RECONCILED WITH SLUSA'S PLAIN DISTINCTION BETWEEN COVERED AND NON-COVERED INVESTMENTS

A. The Fifth Circuit Correctly Declined To Extend SLUSA Based On The Absence Of A Sufficient Connection Between The Misrepresentations And A Transaction In Covered Securities

SLUSA's plain language does not support preclusion in this case because the allegations describe a fraudulent

scheme in connection with transactions in non-covered investments. When construing a statute, the Court starts with the statutory text and proceeds from the understanding that unless otherwise defined, statutory terms are interpreted according to their ordinary meaning. *Sebelius v. Cloer*, 133 S.Ct. 1886, 1893 (2013). If the text of a statute is clear and the statutory scheme is coherent and consistent, the Court's inquiry ceases. *Id.* at 1895. The Court generally assumes that the statute's plain language "accurately expresses the legislative purpose." *Marx v. General Revenue Corp.*, 133 S.Ct. 1166, 1172 (2013) (citations omitted). However, statutory language must be read in context with a view to its place in the overall statutory scheme. *Roberts v. Sea-Land Services, Inc.*, 132 S.Ct. 1350, 1357 (2012) (citation omitted). Moreover, the Court should give effect to every clause and word of a statute. *Setser v. United States*, 132 S.Ct. 1463, 1471 (2012); *TRW Inc. v. Andrews*, 543 U.S. 19, 31 (2001) ("a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant"). Finally, the Court should construe SLUSA in a way that avoids absurd results. *McNeill v. United States*, 131 S.Ct. 2218, 2223 (2011) (citing *United States v. Wilson*, 503 U.S. 329, 334 (1992)).

SLUSA was enacted to prevent securities fraud class actions based on state laws with less stringent pleading requirements than federal law. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 82 (2006). SLUSA provides that certain state class actions alleging

fraud in connection with the purchase or sale of covered securities are removable to federal court, where they shall be dismissed. 15 U.S.C. § 78bb(f)(1)-(2). SLUSA's 'preclusion provision', which bars such state class actions, provides:

> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging-- **(A)** a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or **(B)** that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 78bb(f)(1). Thus, SLUSA plainly requires that the misrepresentations be made "in connection with" an alleged transaction in *covered securities*. *Id.* SLUSA defines a "covered security" as one that is traded nationally or one that is issued by a registered investment company. 15 U.S.C. § 78bb(f)(5)(E) (citing 15 U.S.C. § 77r(b)); *Dabit*, 547 U.S. 71 at 83.

Plaintiff is master of the complaint. *See Standard Fire Ins. Co. v. Knowles*, 133 S.Ct. 1345, 1350 (2013). A defendant cannot simply recast the complaint as a fraud class action concerning covered securities in order to have it preempted by SLUSA. *Levinson v. PSCC Services, Inc.*, No. 3:09-CV-00269 (PCD), 2010 WL 5477250, at *9 (D. Conn. Dec. 29, 2010) ("Although Plaintiffs cannot escape

SLUSA preemption through artful pleading, it is equally true that a 'defendant may not recast plaintiff's Complaint as a securities fraud class action so as to have it preempted by SLUSA.'") (quoting *Paru v. Mut. Of Am. Life Ins. Co.*, No. 04-civ-6907, 2006 WL 1292828, at *4 (S.D.N.Y. May 11, 2006)). To satisfy the "in connection with" requirement, the fraud must relate to the nature of the securities or the risks associated with their purchase or sale, or have some other similar connection to the securities themselves. *Ambassador Hotel Co. v. Wei-Chuan Investment*, 189 F.3d 1017, 1025-26 (9th Cir. 1999); *Mack University LLC v. Halstead*, 2007 WL 4458615, at *7 (C.D. Cal. 2007).

Here, Petitioners recast plaintiffs' claims to allege fraud involving covered securities in order to have them preempted by SLUSA. However, there is no allegation that defendants made any misrepresentation or used any deceptive device in connection with the purchase or sale of a covered security. The covered securities were in fact "non-existent." Chadbourne Br. 30. Yet Petitioners maintain that alleged misstatements about SIB's own investment portfolio (as opposed to the subject CDs) – misstatements which Petitioners *construe to have implied* to the victims that SIB invested its *own money* in covered securities – support applying SLUSA to this action in which the fraudulently induced transactions were not investments in the bank's portfolio, but rather, the victims' purchases of CDs from the bank. Petitioners' construction is contrary to SLUSA's plain language, which requires the alleged misrepresentation to be in connection with the purchase or sale[4] of a covered security. The

4. A "purchase or sale" includes a decision not to purchase or sell (or, a decision to "hold") a covered security. *Dabit*, 547 U.S. 71.

victims in this case were not induced to purchase covered securities. Thus, the Fifth Circuit correctly ruled SLUSA inapplicable.

Several cases arising out of the Bernie Madoff Ponzi scheme similarly reject Petitioners' strained interpretation of SLUSA. For instance, in *Anwar v. Fairfield Greenwich, Ltd.*, 728 F. Supp. 2d 372, 397-98 (S.D.N.Y. 2010), the court held that SLUSA did not apply where plaintiffs' investments were in non-covered investment funds that reinvested within Madoff, who then purchased and sold covered securities. The court reasoned:

> Defendants do not argue that the Plaintiffs' investments. . . amount to "covered securities" under SLUSA; they instead contend that the relevant covered securities are those Madoff lied about purchasing. But this argument overlooks the basic facts of this case, which concern misrepresentations and breaches of duties concerning shares purchased in the Funds. . . ***Investments in the Funds simply were not purchases of covered securities.***

Id. at 398 (emphasis added) (citing *Romano v. Kazacos*, 609 F.3d 512, 523 (2d Cir. 2010) ("SLUSA requires attention to both the pleadings and the realities underlying the claims.")). Similarly, here, investments in the CDs "simply were not purchases of covered securities." *Id.* Accordingly, SLUSA does not bar the instant claims.

In *Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities, LLC*, 750 F. Supp. 2d 450, 452-53 (S.D.N.Y. 2010), plaintiffs

alleged that they invested in certain funds based on misrepresentations about the funds' performance and value. *Id.* at 453. The defendants argued for SLUSA preclusion on grounds that a portion of the funds' portfolios purportedly included covered securities. *Id.* at 452-53. The court held that SLUSA did not apply because the allegations concerned the purchase by plaintiffs of uncovered hedge funds, despite that a portion of the assets in those funds included covered securities. *Id.* at 455. The court explained that "determination of whether SLUSA preemption applies turns on a single – and straight forward – question: whether the statements were made in connection with plaintiffs' purchase or sale of covered securities." *Id.* at 452-53. The court found this outcome was "required" because the alleged fraud related to the hedge funds rather than to the covered securities in the portfolios. *Id.* at 455. The court reasoned that a contrary result would stretch the statute beyond its plain meaning because the alleged misrepresentations did not coincide with a securities transaction. *Id.* at 454-55. Similarly, here, the alleged misrepresentations do not coincide with the purchase or sale of covered securities; rather, they coincide with fraudulently induced transactions in non-covered CDs, rendering SLUSA inapplicable.[5]

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5. Although other Madoff decisions have applied SLUSA, those cases are distinguishable because in those cases, the plaintiffs intended to invest directly or through one or more investment funds, in covered securities. *See* Pet. App. 37a (feeder funds in the Madoff cases were "nothing but ghost entities – easily pierced" and "those funds essentially 'did not exist and had no assets'"). In other words, plaintiffs deposited money in the funds for the purpose of purchasing covered securities. *Id.*

B. This Court Has Never Extended SLUSA In Analogous Circumstances

Petitioners cite a number of this Court's cases calling for a broad reading of the statute and of section 10(b). However, none of those cases implicate the statute's distinction between covered and non-covered investments because none extend SLUSA based on the remote connection to "covered securities" advanced by Petitioners. *See* U.S. Br. 19 ("the scheme here differs from the paradigmatic SLUSA-precluded case"); *see also* Resp. Br. 32. For instance, in *S.E.C. v. Zandford*, 535 U.S. 813 (2002), the alleged fraud involved a broker selling his customers' covered securities and using them for his own benefit without the customers' knowledge or consent. *Id.* at 815, 820. The defendant "engaged in a scheme to defraud" the plaintiffs by selling what were indisputably covered securities and misappropriating the proceeds. *Id.* at 820-21. The Court ruled that these allegations were "in connection with" the sale of covered securities because each sale of covered securities was made by the defendants to further their fraudulent scheme. *Id.* at 820. Thus, *Zandford* clearly involved the direct sale of covered securities by the defendant broker in furtherance of the fraud. In contrast, the instant case involves the fraudulently induced purchase of non-covered CDs. The defendants did not purchase or sell covered securities in furtherance of the fraud.

Similarly, in *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71 (2006), this Court applied SLUSA to a class action brought by holders of covered securities claiming they were fraudulently induced *not* to sell or purchase covered securities. Again, the claims

clearly centered on covered investments. *See Dabit*, 547 U.S. at 83-84 ("Respondent does not dispute that both the class and the *securities at issue in this case* are 'covered' within the meaning of the statute") (emphasis added). The only question was whether the case involved a sale or purchase of covered securities when the fraudulently induced conduct was actually a *lack of* sale or purchase. *Id.* at 87-89. The Court ruled that it did. *Id.* at 88-89 ("The misconduct of which respondent complains here – fraudulent manipulation of stock process – unquestionably qualifies as fraud 'in connection with the purchase or sale' of securities."). By contrast, the fraudulently induced actions in this case involve the purchase of non-covered CDs; the investments 'at issue' are those same CDs.

In *Superintendent of Insurance of State of New York v. Bankers Life & Casualty Company*, 404 U.S. 6 (1971), a seller of treasury bonds was defrauded into believing that it would receive proceeds of the sale, when it in fact did not. The Court held that Rule 10b-5, 17 CFR § 240 applied because the fraud was in connection with the purchase or sale of covered securities. There was no dispute in *Bankers Life* regarding whether covered securities were involved in the fraudulently induced transaction. The question was whether the seller was injured despite the fact that full market value was paid for the bonds. *Bankers Life*, 404 U.S. at 9. The Court ruled there was an injury to the seller because, although the value of the bonds was not affected, the seller itself did not receive the proceeds. *Id.* ("it would be unrealistic to say that a corporation having the capacity to acquire $700,000 worth of assets for its 700,000 shares of stock has suffered no loss if what it gave up was $700,000 but got zero"). Thus, *Bankers Life* also does not assist in resolving the question presented here

because there was no dispute in *Bankers Life* as to the connection between the fraud and the covered securities.

Warf (Holdings) Ltd. v. United International Holdings, Inc., 532 U.S. 588 (2001) held that a company's sale of a stock option with the secret intent from the outset not to honor the option fell under § 10(b) of the Securities Exchange Act and Rule 10b-5. There was no dispute that the option was a covered security, and no dispute that the alleged fraud involved the sale of that option. *See id.* at 592-93. The relevant question was whether the company's secret intent not to honor the option amounted to a misrepresentation or other prohibited conduct. *Id.* at 593-94. The Court held that it did. *Id.* at 594-97. Thus, *Warf* does not inform the question presented because *Warf* did not resolve a dispute as to whether the fraud was in connection with the purchase or sale of a covered security.

Finally, *United States v. O'Hagan*, 521 U.S. 642 (1997) also involved the actual trading of covered securities. The indictment in *O'Hagan* alleged that an attorney defrauded his law firm and its client by misappropriating for his own purposes, material non-public information regarding the client's planned tender offer. *Id.* at 642. The Court held that the fraud was in connection with the sale of covered securities because the fraud was consummated when, without disclosure to his principal, the defendant used the information to purchase or sell securities. *Id.* at 656. Significantly, the Court made clear that the connection would be too tangential to implicate the statute if the person misappropriating funds had put them to other use. *Id.* at 656-57. The Court further elaborated on the limitation on the forms of fraud that § 10(b) reaches, quoting the Government for the proposition that:

> "The misappropriation theory would not. . . apply to a case in which a person defrauded a bank into giving him a loan or embezzled cash from another, and then used the proceeds of the misdeed to purchase securities."... In such a case, the Government states, "the proceeds would have value to the malefactor apart from their use in a securities transaction, and the fraud would be complete as soon as the money was obtained". . . In other words, money can buy, if not anything, then at least may things; its misappropriation may thus be sufficiently detached from a subsequent securities transaction that § 10(b)'s "in connection with" requirement would not be met.

Id. (citing *O'Hagan*, U.S. Br. 24 n.13).

Similarly, here, the theoretical securities transactions that Petitioners ask this Court to accept as grounds for applying SLUSA, to the extent they existed at all, are too detached from the alleged fraud to satisfy the "connection" requirement. Adopting the Ninth and Eleventh Circuits' "in connection with" standard,[6] the Fifth Circuit ruled that a misrepresentation is "in connection with" the purchase or sale of a covered security "if there is a relationship in which the fraud and the stock sale coincide or are more than tangentially related." Pet. App. 32a. The Fifth Circuit reasoned that the standard is consistent with a broad interpretation of SLUSA, and at the same time addresses concerns expressed by this Court that

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6. *See* U.S. Br. 15 n.7 (Fifth Circuit applied the correct standard).

SLUSA's requirements must not be construed so broadly as to encompass every common-law fraud that happens to involve covered securities. *Id.* at 520 (quoting *Zandford*, 535 U.S. at 820). Applying this standard, the Fifth Circuit concluded that the complaints did not principally, if at all, allege fraud in connection with the purchase or sale of a covered security. Any connection with covered securities was at best tangential and thus did not support applying SLUSA in this case. Pet. App. 33a.

II. PETITIONERS' OVERBROAD INTERPRETATION DOES NOT ADVANCE THE STATUTE'S PURPOSE

Petitioners' interpretation of SLUSA would not advance the statute's purpose because it would apply SLUSA to actions concerning non-covered investments simply because of a possible tangential connection to a covered securities transaction. Congress enacted SLUSA "to stem the 'shift from Federal to State courts' and 'prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objections of the PSLRA." *Dabit*, 547 U.S. at 82. Its purpose is to prevent plaintiffs from evading the protections that federal law provides against abusive litigation by filing securities fraud class actions in state, rather than federal, court. H.R. Rep. No. 195-803 at 13 (Oct. 9, 1998) (Conf. Rep.). SLUSA was intended "to protect the interests of shareholders and employees of public companies that are the target of meritless 'strike' suits." H.R. Rep. No. 195-803 at 13. A loophole in the Private Securities Litigation Reform Act of 1995 (PSLRA), Pub. L. No. 104-67, 109 stat. 737, originally enacted to deter such strike suits, resulted in an increasing number of securities related class actions

that alleged only state law claims. Congress sought to resolve this issue by enacting SLUSA, and making federal court "the exclusive venue for most securities fraud class action litigation involving nationally traded securities." H.R. Rep. No. 195-803 at 13.

Significantly, Congress included in SLUSA express language limiting its application to cases alleging fraud in connection with covered securities. *See* 15 U.S.C. § 78bb(f)(1). This Court has cautioned against overbroad constructions of the "connection" requirement. *Zandford* cautions with respect to section 10(b) that the "in connection with" provision "must not be construed so broadly as to convert every common-law fraud that happens to involve securities into a violation of § 10(b)." *Zandford*, 535 U.S. at 820; *see also Warf*, 532 U.S. at 596 (§ 10(b) should not be read to allow numerous plaintiffs to bring what are in reality ordinary state breach of contract claims as federal securities claims); Resp. Br. 3 (Congress imported the phrase "covered security" to preserve state regulatory authority over fraud involving other securities that were not traded on national markets); *id.* at 12-14 (Congress limited statute to "covered securities" to preserve state-law remedies relating to non-covered assets like the SIB CDs). Extending SLUSA to cases alleging fraud in connection with the purchase or sale of a non-covered investment would improperly marginalize, if not render superfluous, the limitation to covered securities expressed in the statute. However, that is precisely what Petitioners seek to do.

Petitioners' overexpansive interpretation would result in the unintended consequence of barring cases involving fraud as to non-covered investments based on a remote,

potential connection to the purchase or sale of a covered security. Consequently, SLUSA would bar an unwarranted number of suits brought by bankruptcy trustees where they involve fraud in connection with the purchase or sale of covered securities. Essential to bankruptcy proceedings is the ability of bankruptcy trustees to exercise their duties in connection with liquidating or litigation trusts in order to move the bankruptcy forward without having to wait for resolution of those claims – claims which often involve significant and complex allegations of fraud. Petitioners' overbroad interpretation would extend SLUSA to cases, even where the alleged fraud involved a transaction in non-covered investments based, solely upon a possible tangential relation to covered securities. Applying SLUSA based on such a remote connection is contrary to the statute's plain language, which expressly limits its application to fraud in connection with transactions in covered securities.

CONCLUSION

In light of these considerations, the Fifth Circuit correctly ruled SLUSA inapplicable because the connection of the alleged fraud to a transaction in covered securities was too tangential to support application of the statute in this case. Accordingly, this Court should affirm the Fifth Circuit's ruling.

Respectfully submitted,

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IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP, *PETITIONER*,
v.
SAMUEL TROICE, ET AL., *RESPONDENTS*.

WILLIS OF COLORADO INC., ET AL., *PETITIONERS*,
v.
SAMUEL TROICE, ET AL., *RESPONDENTS*.

PROSKAUER ROSE LLP, *PETITIONER*,
v.
SAMUEL TROICE, ET AL., *RESPONDENTS*.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF OCCUPY THE SEC AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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Healy v. Ratta,
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Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States (2011) 16

Financial Fraud Enforcement Task Force, About the Task Force, http://www.stopfraud.gov/about.html (last visited July 23, 2012) 15
H.R. Rep. No. 104-369 (1995) (Conf. Rep.)) 19, 20
James B. Stewart, As a Watchdog Starves, Wall Street Is Tossed a Bone, N.Y. Times, July 15, 2011, *available at* http://www.nytimes.com/2011/07/16/business/budget-cuts-to-sec-reduce-its-effectiveness.html 18
Jesse Bricker, *et al.*, *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin (June 2012) 16
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STATEMENT OF INTEREST

Occupy the SEC ("OSEC") is an advocacy group within the New York-based Occupy Wall Street movement.[1] OSEC is comprised of financial professionals with decades of collective experience, concerned citizens, and activists. OSEC's mission is to advocate for specific improvements to existing and pending financial services industry legislation and regulation. OSEC has previously filed *amicus curiae* briefs in courts cases that raise significant issues of concern for financial activists, including a case decided by the Court earlier this year, *Gabelli v. SEC*, 133 S. Ct. 1216, 568 U.S. __ (2013).

This case centers on a key provision of the Securities Litigation Uniform Standards Act ("SLUSA"), which places limits on the ability of fraud victims to file class actions based on state law where the alleged fraud is "in connection with" a securities transaction. 15 U.S.C. § 78bb(f)(1). OSEC files this amicus brief to express its support for the Respondents' position and for the holding of the Fifth Circuit in the case below, *Roland v. Green*, 675 F.3d 503 (5th Cir. 2012).

The Petitioners urge this Court to interpret SLUSA's "in connection with" requirement in an overbroad manner that would subsume a swathe of non-securities transactions into SLUSA's preclusive

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[1] The parties have consented to the filing of this brief. Blanket letters consenting to the filing of amicus briefs have been filed with the Clerk of the Court by Petitioners and Respondents. No counsel for a party authored this brief in whole or in part, and no person, other than *amicus curiae* or its members made a monetary contribution to the preparation or submission of this brief.

ambit. This outcome would greatly hamper the ability of fraud victims to seek relief through the courts.

Financial fraud is no small problem. Such fraud, particularly in the area of non-security mortgages, played a pernicious role in bringing about the recent financial crisis of 2008. That crisis destabilized the global economy and jeopardized the financial position of the average person.

OSEC files this amicus to advocate for the interests of current and future fraud victims, whose access to justice would be severely limited if the Court were swayed by the Petitioners' arguments in favor of a broad interpretation of the "in connection with" requirement.

Our governmental system must protect our rights,[2] and we ask the Court to serve the best interests of the people by interpreting SLUSA in a way that safeguards the right of fraud victims to file class actions under state law in cases where there is only a tenuous connection to a securities transaction.

SUMMARY OF ARGUMENT

The Court should affirm the Fifth Circuit by holding that SLUSA only precludes fraud class actions brought under state law where the crux of the alleged fraud has more than a tangential connection to a covered securities transaction. Contrary to the assertions of the Petitioners, a plain reading of the statute, 15 U.S.C. § 78bb(f)(1)(A), does not illuminate the actual bounds of

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[2] *See* Occupy Wall Street, Declaration of the Occupation of New York City (2011), *available at* http://www.nycga.net/resources/declaration/.

what constitutes a preclusive "connection." Prior Supreme Court cases analyzing the "in connection with" language have also resulted in conflicting holdings on how it should be interpreted. The decision below adroitly balanced the competing mandates of these decisions by focusing its inquiry on whether the asserted connection between an alleged fraud and a covered securities transaction is a *bona fide* one. The Court should follow this common sense approach.

Numerous policy considerations also weigh in favor of affirmation of *Roland*. First and foremost, the Court should recognize that a broad interpretation of the "in connection with" requirement would severely hamper fraud victims' access to justice by expanding SLUSA preclusion into the realm of non-security transactions. Under the overbroad interpretation championed by the Petitioners, frauds based on non-security transactions like mortgage deals and traditional loans could be swept into SLUSA's purview, on the mere basis of some tenuous connection to a securities transaction. Congress hardly intended to produce such an outcome in passing SLUSA.

Further, the Court should recognize that this overreaching would place undue limits on state sovereignty. Such an outcome would be most troubling because state court claims have been recognized, both by Congress and by this Court, as valuable tools of redress. Indeed, SLUSA was passed to preclude actions firmly tied to simple securities-based transactions, and not the complex, non-security based schemes like the one at issue here.

ARGUMENT

I. THE FIFTH CIRCUIT APPROPRIATELY INTERPRETED SLUSA AND BALANCED CONFLICTING SUPREME COURT PRECEDENT IN DEFINING THE SCOPE OF THE "IN CONNECTION WITH" REQUIREMENT

The statute at question in this case, the Securities Litigation Uniform Standards Act of 1998 ("SLUSA"), precludes certain fraud claims under state law where those claims are "in connection with" securities transactions. 15 U.S.C. § 78bb(f)(1)(A) ("No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security."). The task before the Court is to delineate the contours of the phrase "in connection with." That is, how much of a connection does there have to be between a state fraud claim and a securities transaction for SLUSA preclusion to apply?

A. The "In Connection With" Requirement is Ambiguous

The answer to this question is not as self-evident as the Petitioners suggest. In today's sophisticated financial world, most economic transactions are at least tangentially "connected" to some securities purchases. As a result of steady financial deregulation during the

two decades that preceded the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. 111-203, 124 Stat. 1376 (2010), many financial transactions (including fraudulent ones) have become exceedingly complex, such that even the most mundane, localized transaction will involve some downstream securities component.

As noted by the Fifth Circuit below, practically every bank nationwide owns some covered securities in its "treasury" portfolio, and every debt instrument issued by such banks is backed by that portfolio. *See Roland v. Green*, 675 F.3d 503, 518 (5th Cir. 2012). Similarly, the typical retail bank does not store its customers' deposits in a vault. Rather, such deposits are routinely invested in securities of varying maturity. Therefore, there is some "connection," however gossamer, between virtually every bank deposit/loan nationwide and some extant covered securities transaction. Does that mean that *any* class action alleging common law fraud against a deposit-taking or loan-issuing bank is precluded under SLUSA? The Petitioners and their *amici* advocate for this absurd view, perhaps unwittingly. However, the Supreme Court will not construe a statute in a way that leads to absurd outcomes. *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 200-01 (1993).

The Petitioners' briefs attempt to obfuscate the complexity of the issue before the Court by simplistically advocating for a "plain reading" of the "in connection with" requirement. Willis Pet. Br. 22, 25; Chadbourne Pet. Br. 36; Proskauer Pet. Br. 15-16. However, the plain language of the statute is eminently unrevealing as to exactly what constitutes enough of a "connection" for preclusion to take hold. This point is hardly contro-

versial, as the Supreme Court finds itself dealing with the same issue for a second time in the span of seven years. *See Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006). The issue's asserted simplicity is further belied by the litany of circuit court decisions that have wrangled with the difficult question of delimiting the "in connection with" language, each establishing a different benchmark. *See Segal v. Fifth Third Bank, NA*, 581 F.3d 305 (6th Cir. 2009) ("depend on"); *Siepel v. Bank of America, NA*, 526 F.3d 1122 (8th Cir. 2008) ("related to"); *Gavin v. AT & T Corp.*, 464 F.3d 634 (7th Cir. 2006) ("involving," and more than "but for"); *Instituto de Prevision Militar v. Merrill Lynch ("IPM")*, 546 F.3d 1340 (11th Cir. 2008) ("induced by" or "depended upon"); *Madden v. Cowen & Co.*, 576 F.3d 957 (9th Cir. 2009) ("more than tangentially related to"); *Romano v. Kazacos*, 609 F.3d 512 (2d Cir. 2010) ("necessarily allege, necessarily involve, or rest on").

There can be no dispute that the "in connection with" language is ambiguous. The SLUSA statute does not elucidate what constitutes a sufficiently substantial "connection" between a fraud allegation under state law and a covered securities transaction. *See* 15 U.S.C. § 78bb(f)(1)(A). Indeed, this Court has recognized the ambiguity of the very same language in the analogous 10(b) context. *SEC v. Zandford*, 535 U.S. 813, 819 (2002). Under the principle of statutory construction called *in pari materia*, this Court should similarly find the "in connection with" language to be ambiguous for SLUSA preclusion purposes. *See United States v. Freeman*, 3 How. 556, 564 (1845) ("if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an

established rule of law, that all acts *in pari materia* are to be taken together, as if they were one law.").

Courts look to Congressional intent to resolve a statutory provision that is ambiguous. *See, e.g., United States v. Great Northern Ry.*, 287 U.S. 144, 154-55 (1932) ("In aid of the process of construction we are at liberty, if the meaning be uncertain, to have recourse to the legislative history of the measure and the statements by those in charge of it during its consideration by the Congress."). SLUSA's legislative history reveals that it was intended to apply only to transactions involving national securities. 144 Cong. Rec. 10780 (1998) (statement of Rep. Anna Eshoo) ("This legislation is limited in scope and only affects class action lawsuits involving nationally traded securities.").[1] There is no evidence that Congress desired SLUSA's "in connection with" language to subsume state-law fraud claims with only a speck of a connection to national securities transactions. Indeed, there is legislative evidence to the contrary. *See id.*; *see also* S. Rep. 105-182, at 8 (1998) ("national standards for nationally traded securities must be enacted, while preserving the appropriate enforcement powers of state regulators, and the right of individuals to bring suit.").

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[1] This statement by Representative Eshoo, one of SLUSA's principal sponsors, should be considered especially probative of the legislative intent behind that Act, as the legislative remarks "of the sponsor of the language ultimately enacted[] are an authoritative guide to [a] statute's construction." *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 527 (1982).

B. The Petitioners Have Misconstrued the Fifth Circuit Decision, Prior Caselaw and Congressional History Regarding SLUSA's "In Connection With" Requirement

The Petitioners miscite relevant Supreme Court precedent for the proposition that "in connection with" should be interpreted broadly. *See* Willis Pet. Br. 27; Chadbourne Pet. Br. 16; Proskauer Pet. Br. 17. Specifically, they cite *Dabit*, which held that SLUSA preclusion requires that the alleged fraud "coincide" with a securities transaction, and further held that an overly narrow reading of the statute would undercut the effectiveness of SLUSA and its predecessor, the Private Securities Litigation Reform Act of 1995 ("PSLRA"). *Dabit*, 547 U.S. at 85-86.

However, they fail to give due regard to the tension in the caselaw over the appropriate construction of "in connection with." The Court in *Zandford* stated that identical language in the 10(b) context "must not be construed so broadly as to convert every common-law fraud that happens to involve [covered] securities into a violation of § 10(b)." 535 U.S. at 820. Given the *in pari material* principle cited above, the Court should recognize that there is actually a direct conflict in relevant precedent over the applicable construction of "in connection with." The existence of this conflicting caselaw should cause the Court to question the Petitioners' claim that relevant precedent unequivocally mandates a broad construction. Moreover, as explained here and in the Respondents' brief, the Court should resolve the conflict between *Dabit* and *Zandford* in a manner than reaffirms the Fifth Circuit's decision.

The Court has previously cautioned that "in connection with" must be construed in a manner that is "flexible, not technically and restrictively." *Zandford*, 535 U.S. at 821 (quoting *Supt. of Insurance v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12 (1971)). The Fifth Circuit's standard, which assesses whether a securities transaction is "more than tangentially related" to the heart of an alleged fraud, deftly balances the competing tenets of *Dabit* and *Zandford*, settling upon a practical standard that focuses the inquiry on whether the assertedly preclusive connection to a covered security is substantial or can be disregarded as *de minimis*. This pliable standard allows courts to apply SLUSA preclusion in exactly those circumstances that Congress intended, and stands in stark contrast to the rigid, mechanistic approach propounded by the Petitioners. SLUSA was not passed in order to preclude every private state class action with only a tenuous connection to a securities transaction, and the Fifth Circuit's standard avoids that unwonted result.

The Willis Petitioners argue that the Fifth Circuit effectively rewrote the SLUSA statute by restricting preclusion to complaints that "predominantly" allege misrepresentations in connection with SLUSA-covered securities. Willis Pet. Br. 22. However, this reasoning fallaciously confuses quantity and quality. The number of state law allegations is immaterial under the Fifth Circuit's reasoning. What matters is whether "a" security transaction is sufficiently related to the crux of "a" misrepresentation claim to warrant preclusion. *See Roland*, 675 F.3d at 521.

The number of allegations in a complaint is irrelevant, as SLUSA preclusion applies even if one state-law fraud claim has a *bona fide* link to a securities

transaction. *See id.* Thus, the Petitioners are misguided in suggesting that plaintiffs can evade SLUSA preclusion by simply padding their complaints with non-securities claims. Willis Pet. Br. 35, 46; Chadbourne Pet. Br. 38. Any so-called "padding" of claims would not change a court's analysis under the *Roland* standard and further would not increase the prospect of vexatious securities claims. In fact, if plaintiffs "padded" their state law class actions with superfluous allegations, the inclusion of each additional allegation would marginally *increase* the chance of SLUSA preclusion, as *any* such allegation could potentially be deemed to have a sufficiently substantial connection to a covered securities transaction. Therefore, there should be no concern that the Fifth Circuit's reasoning allows a covered state law class action complaint to escape the application of SLUSA by merely including other allegations that are farther removed from a covered securities transaction.

Petitioners also contend that *Roland*'s "inquiry into whether representations about covered securities were central or peripheral is beside the point." Willis Pet. Br. 35. Under their reasoning, the mere existence of any connection between a state law fraud claim and a securities transaction, *however tenuous*, is enough for preclusion. However, the majority of circuit courts would disagree, having held in different ways that the nature and tenor of the "connection" between an alleged fraud and a potentially preclusive securities transactions is vital -- a strong connection will lead to preclusion, while a weak connection will not. *See Romano*, 609 F.3d at 522 (2d Cir. 2010); *Madden*, 576 F.3d at 965-66 (9th Cir. 2009); *LaSala v. Bordier et Cie*, 519 F.3d 121, 141 (3d Cir. 2008); *IPM*, 546 F.3d at 1349

(11th Cir. 2008); *Roland*, 675 F.3d at 521 (5th Cir. 2012). Whether a preclusive "connection" exists is necessarily fact-specific, and the Court should not be persuaded by Petitioners' attempts to fabricate a rigid *per se* standard out of SLUSA's inherently malleable "in connection with" language.

Another argument raised by the Petitioners further manifests that they have misconceived the decision below. They argue that *Roland* stands for the proposition that SLUSA preclusion absolutely requires that a plaintiff's *form of investment* be "in connection with" a covered securities transaction. Willis Pet. Br. 22. However, the *Roland* court did not base its decision on such a requirement. Rather, it focused its inquiry on the link between the misrepresentation claim and the securities transactions implicated in the Stanford scheme. *Roland*, 675 F.3d at 521-22. In assessing that connection, it recognized that the fraud claim's most relevant connection actually was to non-security certificates of deposit. *Id.* *A fortiori*, the asserted connection between the fraud allegation and the downstream securities transactions in the Stanford scheme was relatively weaker. *See id.* The Fifth Circuit found the securities transactions in the scheme to be tangential, such that the fraud allegation and the covered securities transactions were not "in connection with" and did not "coincide" with each other. *Id.* at 523.

Further, the Petitioners' arguments suffer from inconsistencies that undermine their reliability. On the one hand, they make the legal argument that SLUSA preclusion applies if "a" misrepresentation allegation can be massaged in any way to relate to "a" covered security transaction, no matter how flimsy the connection. *See* Willis Pet. Br. 22, 25; Chadbourne Pet. Br. 36;

Proskauer Pet. Br. 15-16. However, their factual arguments do not demonstrate confidence in this standard, as they repeatedly emphasize the centrality of securities transactions to the Ponzi scheme that defrauded the Respondents. Willis Pet. Br. 29-30; Chadbourne Pet. Br. 28-30; Proskauer Pet. Br. 33-35. Their fact-based arguments are premised on the notion that, in order to make a credible preclusion argument, a substantial or *bona fide* connection to a securities transaction has to be established. Thus, these arguments should be seen as an affirmation of the Fifth Circuit's focus on whether a securities transaction has more than a tangential relationship to the heart of an alleged fraud. *See Roland*, 675 F.3d at 521.

The Petitioners also contradict each other in framing the appropriate standard for analysis of the "in connection with" requirement. On the one hand, the Willis Petitioners admit that *Dabit* stood for the proposition that SLUSA "requires only that the misrepresentation coincide with the purchase or sale of covered securities." Willis Pet. Br. 37-38 (citing *Dabit*, 547 U.S. at 85-86). On the other hand, the Proskauer Petitioners claim that *Dabit* did not purport to adopt a "coincide" requirement. Proskauer Pet. Br. 18. This inconsistency has two implications: first, whatever standard was established by *Dabit* is ripe for repeal, as learned counsel remain at odds as to exactly how that case defined the "in connection with" requirement. Second, the Petitioners' exhortations as to the precedential value of *Dabit* must be taken with a grain of salt, as their arguments undermine each other.

II. THE COURT SHOULD NARROWLY INTERPRET "IN CONNECTION WITH" FOR PUBLIC POLICY REASONS

The Supreme Court has expressly endorsed the examination of "policy considerations" in determining the appropriate scope of SLUSA's "in connection with" language. *Dabit*, 547 U.S. at 81. Here, numerous policy considerations militate in favor of a narrow interpretation of the "in connection with" requirement.

A. A Broad Interpretation Will Benefit Fraudsters and Hurt the Defrauded

The Petitioners make the counter-intuitive and illogical claim that a broad interpretation of the "in connection with" language would benefit investors. Willis Pet. Br. 26 ("to ensure that the next generation of Madoffs and Stanfords do not outfox both investors and the SEC, it is essential that 'in connection with' be given its full, broad scope."). In actuality, such an interpretation would have the opposite effect: a broad reading would magnify SLUSA's preclusive effect, thereby limiting venue options for fraud victims.

Investors in national securities have some measure of protection over their investments, as such securities are regulated by the Securities and Exchange Commission ("SEC"). Thus, even if SLUSA limits the ability of defrauded investors in national securities to seek redress through state law class actions, such a result is mitigated by the prospect of SEC oversight and enforcement. However, investors in non-securities (like the certificates of deposit that were central to the Stanford ponzi scheme) may not benefit from robust

SEC oversight.[4] Thus, state law fraud class actions are vital weapons that can safeguard the interests of non-securities investors, whom the SEC does not protect. Unfortunately, a broad interpretation of SLUSA would improperly preclude many non-security transactions, to the considerable detriment of fraud victims.

As explained above, practically any non-securities transaction has at least a tenuous link to a securities transaction. An overbroad interpretation of the "in connection with" requirement would allow SLUSA's preclusive effect to seep into the realm of non-securities, like the Stanford certificates of deposit.

This outcome would create a black hole in regulation, given that the SEC's enforcement authority does not reach unregulated non-securities. Fraudsters would flock to fill this lacuna, emboldened by the fact that the investors they defraud would not be able to find redress through state law class actions or through the SEC. Under the broad interpretation supported by the Petitioners, a con-artist could escape state law scrutiny by simply linking a fraudulent scheme to some distant securities transaction. Congress did not pass SLUSA to facilitate this unjust outcome.

Recent frauds perpetrated by the likes of Enron, Worldcom, Bernie Madoff and Allen Stanford have evinced, in many cases, staggering layers of complexity based on multiple subsidiaries and pass-through entities. Under a broad construction of the "in connection with" requirement, each such layer presents an oppor-

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[4] Indeed, the Stanford International Bank's ("SIB") lawyers are alleged to have misrepresented to the SEC that the agency did not have regulatory authority over the certificates of deposit. *Roland*, 675 F.3d at 523-24.

tunity for a fraudster to escape state law liability. As an obvious matter of policy, defrauders should not be rewarded with class action immunity under state law on the mere basis that they have crafted overwrought schemes. Financial fraud has become a matter of particular concern in the last few years given the catastrophic impact that excesses on Wall Street have had on all participants in the global economy. While recessions are cyclical in nature, fraud played a significant role in propelling the onset and exacerbating the severity of the recent financial crisis. The government has recognized the causative role that financial fraud played in the 2008 financial crisis,[5] which has devastated the economic position of multinational conglomerates and poor individuals alike.

Expanded preclusion under SLUSA would most severely impinge upon the rights of relatively small firms and individuals, the very parties that are most in need of protection under the law. While a defrauded investor could theoretically file an *individual* state law claim despite SLUSA, Norman S. Poser, Broker-Dealer Law And Regulation § 17.2 (2012), this is not a viable alternative for most small parties. Fraud victims with few resources likely cannot afford to file lawsuits without the cost-sharing benefits of large class actions.

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[5] For instance, the Financial Fraud Enforcement Task Force, a government body comprised of twenty federal agencies, ninety-four US Attorneys Offices and state and local partners, states on its website that it was created in November 2009 "to hold accountable those who helped bring about the last financial crisis as well as those who would attempt to take advantage of the efforts at economic recovery." About the Task Force, http://www.stopfraud.gov/about.html (last visited July 23, 2013).

One area of particular concern is the deleterious impact that a broad interpretation of the "in connection with" requirement would have on defrauded mortgagors. Given the proliferation of mortgage-backed securities over the last two decades, one might argue that most mortgages nationwide are actually issued "in connection with" a securities transaction. A broad interpretation of this phrase could have a devastating impact on the capacity of defrauded mortgagors to bring state law-based class actions against their defrauders. The recent financial crisis is testament to the dangers of mortgage fraud, which flourished in an environment of collapsing lending standards and lax regulation. A study by the Financial Crisis Inquiry Commission estimated that the total economic loss attributable to mortgage fraud alone between 2005 and 2007 was $112 billion. The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States xxii (2011). The Great Recession, borne largely of acquisitive speculation, mismanagement, negligence and fraud at financial institutions, extinguished nearly 40% of family wealth from 2007 to 2010. Jesse Bricker, *et al.*, *Changes in U.S. Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances* 17, Federal Reserve Bulletin (June 2012). The inflation-adjusted median household net worth in the country actually regressed back to 1992 levels. *Id.* Should similar levels of mortgage fraud resurface, victims must retain the capacity to file class action suits based on state law claims, especially in light of the fact that mortgage fraud typically has little to do, at heart, with securities transactions.

B. Federalism Principles Require that the Court Reject a Broad Interpretation of the "In Connection With" Requirement in Deference to State Courts

Under Article III of the U.S. Constitution, federal courts are courts of limited jurisdiction. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). State courts retain any powers not specifically delegated to federal courts. *See Healy v. Ratta*, 292 U.S. 263, 270 (1934) ("[d]ue regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which the statute has defined.").

While SLUSA was passed to place certain limits on securities class actions under state law, its preclusive effect is not boundless. The statute is incontrovertibly limited to purchases or sales of covered securities. 15 U.S.C. § 78bb(f). As argued above, the Congressional intent behind SLUSA was to specifically exclude non-securities transactions from preclusion. A broad interpretation of the "in connection with" requirement is a back-door mechanism by which non-securities can be engulfed into SLUSA's scope. If the view propounded by the Petitioners prevails, SLUSA would preclude a state law class action alleging fraud in a non-securities transaction even if the fraud had only an incidental link to a securities transaction. The Court should avoid such an interpretation in recognition of the fine-line that Congress established around covered securities transactions in SLUSA, and in light of principles of federalism and state sovereignty.

C. The Continued Availability of State Court Claims Would Yield Efficient Outcomes

Aside from infringing on state sovereignty, the broad interpretation championed by the Petitioners would also lead to less efficient public outcomes. The Supreme Court has recognized that private lawsuits can be a "most effective weapon" in the enforcement of securities regulations. *JI Case Co. v. Borak*, 377 U.S. 426, 432 (1964). State law actions involving non-securities can benefit the greater public as a valuable secondary source of securities enforcement, as they often provide the SEC with evidence of securities violations that is revealed through the discovery process in such cases.[6] An expansion of SLUSA preclusion by this Court would reduce the number of venues available to fraud victims for pursuit of redress. As a result, the number of private lawsuits seeking justice against fraud would concomitantly be reduced, meaning that a greater number of fraudsters would escape liability. To make matters worse, this outcome would only encourage future deception by malefactors. The Court can avoid this unsalutary outcome by affirming the Fifth Circuit's balanced interpretation of the "in connection with" requirement.

The Court should also safeguard the availability of state law claims because of the increasing burden that

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[6] This secondary source of evidence can be invaluable to the SEC, which has seen its budget remain relatively static despite a burgeoning regulatory mandate under the Dodd-Frank Act. *See* James B. Stewart, *As a Watchdog Starves, Wall Street Is Tossed a Bone*, N.Y. Times, July 15, 2011, *available at* http://www.nytimes.com/2011/07/16/business/budget-cuts-to-sec-reduce-its-effectiveness.html.

has been imposed on federal courts. Since 2003, the federal caseload in district courts has increased by 11 percent. United States Courts, *Judicial Caseload Indicators* (March 2012), *available at* http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/Statistics/FederalJudicialCaseloadStatistics/2012/front/March12Indicators.pdf. Expanding the scope of the "in connection with" requirement would only exacerbate the considerable strain that federal dockets already experience. In contrast, allowing state courts to entertain fraud class actions having only tangential relationships to securities transactions might actually reduce the federal judiciary's caseload, and would certainly promote judicial efficiency, as ideally state courts should be the ones to adjudicate state law claims.

D. SLUSA and PSLRA's Antagonism to Vexatious Third Party Litigation Was Not Directed to Complex Non-Security Based Schemes

While the Petitioners and their *amici* correctly note that SLUSA and the PSLRA were designed to limit "vexatious" private securities litigation, they incorrectly apply that presumption to the facts at hand. *See* Willis Pet. Br. 5; Breazeale, Sachse & Wilson Am. Br. 5, 8.

This Court has examined the legislative history of PSLRA and SLUSA to find that these statutes were designed to preclude fraud class actions against third parties, because such third party actions could, *inter alia*, endanger the whole economy. *Dabit*, 547 U.S. at 81 (quoting H.R. Rep. No. 104-369, at 31 (1995) (Conf.

Rep.)). As noted by the Breazeale *amicus curiae*, the fraudulent scheme perpetrated by Charles Keating in the 1980's was "the paradigmatic case" that Congress had in mind in passing PSLRA and SLUSA. Breazeale Am. Br. 3, 6 (citing, *e.g.*, 141 Cong. Rec. S9208 (daily ed. June 28, 1995)). That is, Congress intended these statutes to preclude class action suits against third-party lawyers, auditors, and others associated with frauds similar to the Keating scheme. *Id.*

Keating's deception was to straight-forwardly sell securities and bonds while obscuring the underlying business's health through other actions. *See In re American Continental Lincoln S&L Sec. Lit.*, 794 F. Supp. 1424, 1432-33 (D. Ariz. 1992); *Lincoln Savings & Loan Ass'n v. Wall*, 743 F. Supp. 901, 907-08 (D.D.C. 1990). The fraudulent transactions perpetrated by SIB, however, were markedly more complex than those underlying the Keating S&L scandal. The fraud in this case, for instance, revolves not around statements and actions in support of a single securities fraud scheme but rather a pattern of statements in support of the sale of a complex financial instrument with "multiple layers of separation between the CDs and any security purchased. " *Roland*, 675 F.3d at 522 (5th Cir. 2012) (internal citation omitted). The CDs' complexity obscured their true value and basis. *See id.* at 508-511, 521-23.

Admittedly, not all fraudulent schemes involve complex layers that limit investor transparency towards the heart of the transaction. However, where fraudsters do sell complex and opaque instruments, third parties such as the Willis insurers and outside auditors often perform a central role in abetting that fraud, by issuing misstatements that deceptively wangle inves-

tor confidence. *Roland*, 675 F.3d at 521-22. SLUSA's antagonism to third party litigation was not intended to excuse such culpable conduct.

CONCLUSION

For the foregoing reasons, *amicus curiae* urges the Court to rule in favor of the Respondents and hold that the Fifth Circuit correctly construed the "in connection with" language found in 15 U.S.C. § 78bb(f).

July 24, 2013

Respectfully submitted,

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AMICUS CURIAE BRIEF

Nos. 12-79, 12-86 and 12-88

IN THE

Supreme Court of the United States

CHADBOURNE & PARKE LLP,

Petitioner,

and

WILLIS OF COLORADO INCORPORATED, BOWEN, MICLETTE & BRITT, INC. AND SEI INVESTMENTS COMPANY,

Petitioners,

and

PROSKAUER ROSE LLP,

Petitioner,

v.

SAMUEL TROICE, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF *AMICI CURIAE* PUBLIC INVESTORS ARBITRATION BAR ASSOCIATION, AMERICAN ASSOCIATION OF RETIRED PERSONS AND NETWORK FOR INVESTOR ACTION AND PROTECTION IN SUPPORT OF RESPONDENTS

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Dupuy v. Dupuy,
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Gochnauer v. A.G. Edwards & Sons, Inc.,
810 F.2d 1042 (11th Cir. 1987).....7, 8

Gray v. Seaboard Sec., Inc.,
126 F. App'x 14 (2d Cir. 2005).....7

In re Mut. Funds Inv. Litig.,
384 F. Supp. 2d 845 (D. Md. 2005) 7

Iowa Grain v. Farmers Grain and Feed Co.,
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Komanoff v. Mabon, Nugant & Co.,
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Marvin v. Brooks,
94 N.Y. 71 (1883).....7

Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit,
547 U.S. 71 (2006)..... .....4, 6, 16

Cited Authorities

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Santa Fe Indus. v. Green,
430 U.S. 462 (1977).....7

Sofonia v. Principal Life Ins. Co.,
465 F.3d 873 (8th Cir. 2006).....7

Stoneridge Inv. Partners v. Scientific-Atlanta, Inc.,
552 U.S. 148 (2008).....7, 8

Tellabs, Inc. v. Makor Issues & Rights, Ltd.,
551 U.S. 308 (2007).....4, 6

Thompson v. RelationServe Media, Inc.,
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Topalian v. Ehrman,
954 F.2d 1125 (5th Cir. 1992).....16

Statutes and Other Authorities

Jumpstart Our Business Startups Act.....3

PSLRA, the Private Securities Litigation Reform Act.....3, 12

Securities Act of 1933.....4

15 U.S.C. § 78 bb(f)(5)(b)(ii)(II).....17

Cited Authorities

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HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 31, 1995 U.S.C.C.A.N. 730, 0, 1995 WL 709276, 26 6

HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 34, 1995 U.S.C.C.A.N. 730, 1995 WL 709276, 28 14

HOUSE CONFERENCE REPORT NO. 105-803, H.R. CONF. REP. 105-803, 13, 1998 WL 703964, 10 9

HOUSE CONFERENCE REPORT NO. 105-803, H.R. CONF. REP. 105-803, 15, 1998 WL 703964, 12 9

HOUSE CONFERENEC REPORT NO. 104-369, H.R. CONF. Rep. 104-369, 32, 1995 U.S.C.C.A.N. 730, 1995 WL 709276, 27 13

SENATE REPORT NO. 104-98, S. REP. 104-98, 8, 1995 U.S.C.C.A.N. 679, 1995 WL 372783, 7 6

SENATE REPORT NO. 105–182, S. REP. 105-182, 4, 1998 WL 226714, 3 .....5, 11

SENATE REPORT NO. 105–182, S. REP. 105-182, 5, 1998 WL 226714, 4 12

SENATE REPORT NO. 105–182, S. REP. 105-182, 8, 1998 WL 226714, 7 12

Cited Authorities

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2011 NASAA's Top Investor Traps, available at http://www.nasaa.org/3752/top-investor-traps/ 15

Christopher R. Lane, 39 NEW ENG. L. REV. 317 (2005) 4

Jonathan R. Macy & Geoffrey P. Miller, ORIGIN OF THE BLUE SKY LAWS, 70 TEX. L. REV. 347 (1991) 4

Joseph C. Long, 12A BLUE SKY LAW § 9:151.27 (West 2012) 4, 5

JUMPSTART OUR BUSINESS STARTUPS ACT of 2012, 112 Pub. L. No. 106, 126 Stat. 314 16

NASAA's Legislative Agenda Item No. 3 – Strengthen State/Federal Collaboration, available at http://www.nasaa.org/issues-and-advocacy/legislative-agenda-3/.....15

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Study on Investment Advisors and Broker-Dealers, Securities and Exchange Commission, report by staff of the U.S. Securities and Exchange Commission, January 2011 available at <http://sec.gov/news/studies/2011/913studyfinal.pdf> at p. 54 8

IDENTITY OF *AMICI CURIAE* AND THEIR INTERESTS IN THE CASE[1]

Public Investors Arbitration Bar Association ("PIABA"), AARP and Network for Investor Action and Protection ("NIAP") respectfully submit this Brief as *Amici* in support of Respondents, Samuel Troice, *et al.* *Amici* support affirmance of the opinion of the Court of Appeals.[2] The resolution of this case will have a significant impact on the integrity of the securities markets and the remediation of fraud in those markets. The remediation of fraud is of particular concern to all *Amici*.

PIABA is an international bar association established in 1990 to promote the interests of public investors in securities and commodities arbitration and litigation. PIABA members include current and former state and federal securities regulators, securities professors, and experienced securities practitioners.

PIABA also publishes books and reports on securities arbitration and litigation, conducts regular CLE programs for its members, and communicates directly with governmental and quasi-governmental

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1. Counsel signing this Brief for PIABA, AARP, and NIAP authored this Brief together with assistance from other members or representatives of their respective organizations. No counsel for any party in this case participated in any way in authoring this Brief. No person or entity other than the organizations identified here as *Amici* made any monetary contribution to the authorship or cost of filing of this Brief.

2. Petitioners and Respondents have consented to the filing of this Amicus Brief.

securities regulators, such as the Securities and Exchange Commission, the North American Securities Administrators Association, and the Financial Industry Regulatory Authority, on issues of interest to PIABA members and public investors. This Court, federal Circuit Courts of Appeal, and state supreme courts have permitted PIABA to appear as an *amicus curiae* in cases involving issues important to public investors' claims against their stockbrokers, financial advisors, securities and issuers.

American Association of Retired Persons ("AARP") is a nonprofit, nonpartisan organization, that helps people turn their goals and dreams into real possibilities, strengthens communities and fights for the issues that matter most to families such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse. AARP advocates for individuals in the marketplace by selecting products and services of high quality and value to carry the AARP name as well as helping members obtain discounts on a wide range of products, travel, and services. AARP Foundation is an affiliated charity of AARP that is working to win back opportunity for struggling Americans 50+ by being a force for change on the most serious issues they face today: housing, hunger, income and isolation. AARP has staffed offices in all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Learn more at www.aarp.org.

AARP submits comments on legislative and regulatory proposals that address investment fraud, files amicus briefs in cases involving the securities laws, and opposes legislative efforts to limit the remedies of defrauded investors.

NIAP is a nonprofit organization with over 1,000 associate members. It represents investors and their interests. NIAP participates in proceedings before Congress and courts, and deals with the media. NIAP arose because of the Madoff fraud, but its efforts also extend to other forms of fraud and misconduct that victimize investors, including the Stanford fraud.

SUMMARY OF ARGUMENT

SLUSA, the Securities Litigation Uniform Standards Act, followed PSLRA, the Private Securities Litigation Reform Act, as an effort to curb abuses in class actions by "professional plaintiffs" involving publicly traded securities. Congress intended in enacting the PSLRA to protect statements by national *issuers* to promote raising capital and the efficiency of national capital markets. But Congress in enacting PSLRA and SLUSA did not intend in either statute to preclude the rights of defrauded purchasers of private offerings under state law or to preclude claims against anyone other than issuers in national markets. Nor did Congress intend to allow frauds in private offerings. Private litigants acting as private attorneys general have long been an important part of securities regulation under state law, given the significant volume of private offerings, many of which are used in fraudulent schemes. With the anticipated increase of private offerings after the passage of the Jumpstart Our Business Startups Act (or "JOBS Act"), private litigation is more important than ever in serving that purpose.

The standard crafted by the Court of Appeals properly balances those interests. An investor tricked into purchasing an illiquid private offering not traded in

a national market should be permitted to invoke state law rights and remedies even if she sold covered securities to fund the purchase.

ARGUMENT

I. Private Remedies under State Law Provide Vital Protection for Investors Not Available Under Federal Law

Allowing defrauded investors to assert their own private rights of action is "'an indispensable tool'" crucial to "maintaining the integrity of domestic capital markets." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 321, n.4 (2007) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 81 (2006)). Today, both state and federal laws regulate the purchase and sale of securities. But state law came long before federal law,[3] and the right of investors to sue has long been a critical component of state regulation of securities. Joseph C. Long, 12A BLUE SKY LAW § 9:151.27 (West 2012). As Professor Long observes:

> The civil recovery provisions of the state securities acts serve an important *public* function in the enforcement of those acts. The state securities agencies and criminal prosecutors simply have neither the staff nor the funds to fully enforce the acts. As a result,

3. Christopher R. Lane, 39 New Eng. L. Rev. 317, 321 (2005) ("[s]tate regulation began well before ... the federal ... laws ...."); Jonathan R. Macy & Geoffrey P. Miller, ORIGIN OF THE BLUE SKY LAWS, 70 Tex. L. Rev. 347, 348 (1991) (nearly exclusive state regulation for "more than a generation" before Securities Act of 1933).

> the investor bringing a civil recovery serves as a private attorney general.

Id. (original emphasis).

As part of their enforcement scheme, state securities regulators rely heavily upon plaintiffs acting as private attorneys general, often with the benefit of fee shifting statutes, to enhance enforcement and ferret out fraud. Private plaintiffs acting as private attorneys general are often better positioned than public regulators to discover and pursue fraudulent schemes in the sale of investments. Private plaintiffs also provide states with an efficient means of increasing enforcement without increasing the size of government staffs or straining public finances.

Congress recognized before enacting SLUSA that the legislation had been criticized "as being an affront on Federalism and contrary to the recent trend towards reinforcing state rights."[4] Ultimately, Congress voted to pass SLUSA, but Congress said in doing so that it was "sensitive" to the importance of protecting individual states' decisions about how to conduct their own securities regulation schemes.[5]

Congress has recognized that "[p]rivate securities litigation is an indispensable tool with which defrauded investors can recover their losses without having to rely

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4. SENATE REPORT NO. 105–182, S. REP. 105-182, 4, 1998 WL 226714, 3.

5. SENATE REPORT NO. 105–182, S. REP. 105-182, 4, 1998 WL 226714, 3.

upon government action."[6] This Court has acknowledged that "[n]othing in the PSLRA...casts doubt on [that] conclusion." *Tellabs*, 551 U.S. at 321, n.4. As with the PSLRA, Congress intended for SLUSA to prevent abuses in class action litigation involving nationally traded securities,[7] but did not intend to preclude investors' individual rights to sue.[8] According to the testimony of Arthur Levitt, then the Chairman of the SEC to Congress, "private rights of action are not only fundamental to the success of our securities markets, they are an essential complement to the SEC's own enforcement program."[9] Congress has observed that "private lawsuits promote public and global confidence in our capital markets and help to deter wrongdoing and to guarantee that corporate officers, auditors, directors, lawyers and others properly perform their jobs."[10]

State law-based private securities litigation is also important because it provides remedies for financial wrongs not available under federal securities statutes. Investors can sue not only under state "blue sky" laws, but

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6. HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 31, 1995 U.S.C.C.A.N. 730, 0, 1995 WL 709276, 26.

7. *Dabit*, 547 U.S. at 80-82.

8. *See* footnote 17 below and accompanying text.

9. SENATE REPORT NO. 104-98, S. REP. 104-98, 8, 1995 U.S.C.C.A.N. 679, 687, 1995 WL 372783, 7.

10. HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 31, 1995 U.S.C.C.A.N. 730, 0, 1995 WL 709276, 26.

also under state common law for breach of fiduciary duty[11] and breach of contract.[12] Fiduciary duties under state common law have played an important role in securities enforcement since at least a half a century before the federal government passed its first securities laws. *See, e.g., Marvin v. Brooks*, 94 N.Y. 71 (1883).[13]

This Court held early on in its analysis of private rights under Securities and Exchange Act Rule 10b-5 that state law, not federal law, is the source of fiduciary duties and the private actions and remedies for the breaches of those duties. *Santa Fe Indus. v. Green*, 430 U.S. 462, 479-80 (1977). In *Stoneridge Inv. Partners v. Scientific-Atlanta, Inc.*, this Court repeated its caution against letting the federal securities laws interfere with the well

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11. It "is clear that a broker owes a fiduciary duty of care and loyalty to a securities investor." *See, e.g., Gochnauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir. 1987) (citing *Dupuy v. Dupuy*, 551 F.2d 1005, 1015 (5th Cir. 1977) .

12. *See, e.g., Komanoff v. Mabon, Nugant & Co.*, 884 F. Supp. 848, 859-60 (S.D.N.Y. 1995); *Iowa Grain v. Farmers Grain and Feed Co.*, 296 N.W.2d 22, 24 (Iowa 1980).

13. Even though the facts that support the elements of these fundamental state law causes of action form the core of almost all business relationships and have been traditionally regulated by state common law, they can still be precluded by SLUSA. *See, e.g., Gray v. Seaboard Sec., Inc.*, 126 F. App'x 14, 17 (2d Cir. 2005) (claims for breach of contract and negligence preempted by SLUSA); *Sofonia v. Principal Life Ins. Co.*, 465 F.3d 873, 875 (8th Cir. 2006) (claims for fraud, breach of fiduciary duty and unjust enrichment preempted by SLUSA); *In re Mut. Funds Inv. Litig.*, 384 F. Supp. 2d 845, 871 (D. Md. 2005) (claims for breach of fiduciary duty/constructive fraud, aiding and abetting breach of fiduciary duty, and unjust enrichment preempted by SLUSA).

"functioning and effective state-law guarantees" provided by actions for breaches of fiduciary duties. 552 U.S. 148, 161 (2008).

SLUSA can sometimes foreclose state law rights and remedies for investors.[14] Accordingly, the Court should construe SLUSA so that the statute does not preclude important state law rights and remedies when doing so would not serve the purpose of the statute. State common law breach of fiduciary duty actions provide an important remedy not available under federal law. "The federal securities statutes were modeled after the common law actions of fraud and deceit," not state fiduciary duty law. *Gochnauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir. 1987). "Fraud is not the same as breach of fiduciary duty." *Id.* SEC staff has observed that "broker-dealers are generally not subject to a fiduciary duty under the *federal* securities laws."[15] Because "not every instance of financial unfairness or breach of fiduciary duty will constitute a fraudulent activity under § 10(b) or Rule 10b-5," the Court should be "wary of foreclosing common law breach of fiduciary duty actions which supplement existing federal or state statutes." *Gochnauer*, 810 F.2d at 1049.

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14. *See* footnote 13 above.

15. *Study on Investment Advisors and Broker-Dealers, Securities and Exchange Commission*, report by staff of the U.S. Securities and Exchange Commission, January 2011 available at <http://sec.gov/news/studies/2011/913studyfinal.pdf> at p. 54 (emphasis added).

II. Applying SLUSA to Disputes Regarding Non-Covered Securities Would Not Advance the Purpose of Either SLUSA or the PSLRA

Because SLUSA precludes application of state law, it should be narrowly construed so as to preserve legitimate state interests.

Congress explained that SLUSA "is designed to protect the interests of shareholders and employees of *public companies* that are the target of meritless 'strike' suits."[16] In explaining its rationale for this preference, Congress said:

> It is important to note that companies cannot control where their securities are traded after an initial public offering. As a result, companies with *publicly-traded* securities cannot choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its peculiar litigation system on all *national issuers.*
>
> The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving *nationally traded* securities.[17]

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16. HOUSE CONFERENCE REPORT NO. 105-803, H.R. CONF. REP. 105-803, 13, 1998 WL 703964, 10 (emphasis added).

17. HOUSE CONFERENCE REPORT NO. 105-803, H.R. CONF. REP. 105-803, 15, 1998 WL 703964, 12 (emphasis added).

Congress intended for the PSLRA to assist national issuers in raising capital, especially issuers in high tech businesses, and, accordingly, to increase the efficiency of capital markets. This was made plain in a Senate Report:

> Disparate, and shifting, state litigation procedures may expose *issuers* to the potential for *significant liability that cannot be evaluated in advance or assessed when a statement is made.*
>
> * * * * *
>
> Further, the Committee has found that this state class-action trend has had an impact beyond the number of, and dollar amounts involved in, the class actions filed. *This trend has created a ripple-effect that has inhibited small, high-growth companies in their efforts to raise capital, and has damaged the overall efficiency of our capital markets.* Specifically, the increased risk of state court class actions has had a chilling effect on the use of the "safe-harbor" and other important provisions of the 1995 Act. T*he safe harbor was intended to help get valuable financial forecasts and forward-looking information to investors, so that these investors could make decisions with as much information as possible*; as Thomas O'Hara of the National Association of Investors Corporation ("NAIC"), testified:
>
> > *The key to becoming successful with high-tech investments* is a willingness to recognize—and tolerate—the inherent

> volatility of the business *and access to crucial forward-looking information so an investor can make a wise decision.*[18]

In short, the PSLRA was intended to put an end to "strike suits" against *issuers*. Congress thought these suits were based on *alleged* misstatements—on *alleged*, and often *thinly* alleged, fraud—and would be brought by "plaintiffs' lawyers" if the market price of a newly issued security were to drop in a national market after issuance. Congress did not intend to protect third-party middlemen hatching fraudulent Ponzi schemes or to preclude the rights of the victims of those schemes.

This case has nothing to do with the protection of *issuers*—particularly high tech companies—against liability for statements whose legal consequences cannot be assessed in advance. This case has nothing to do with strike suits or with merely *alleged* fraud, let alone *thinly* alleged fraud. Nor does this case involve protecting the ability of high tech issuers to raise capital.

Congress was concerned about national issuers and publically traded securities. Issuers of limited private placements choose where they sell their securities, and can avoid jurisdictions they perceive as presenting unreasonable litigation costs. Private offerings also are a major source of fraud, and are a primary concern of state securities regulators and state law private securities litigation. Congress clearly intended to leave private,

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18. S. Rep. No. 105-182, 2nd Sess. 1998, Report of the Committee on Banking, Housing and Urban Affairs, May 4, 1998, 1998 WL 226714, at *3. (emphases added).

limited offerings outside of the scope of SLUSA. Allowing issuers in private placements the benefits of SLUSA preclusion would not advance the purposes of SLUSA. It would only serve to create additional obstacles for defrauded investors seeking to recover their losses.

Congress recognized when it enacted SLUSA the importance of maintaining the vital role of state law in regulating non-publicly traded securities. Congress found "that in order to avoid...thwarting...the purpose of the Private Securities Litigation Reform Act of 1995, national standards for nationally traded securities must be enacted, *while preserving the appropriate enforcement powers of state regulators, and the right of individuals to bring suit.*"[19] Congress explained:

> In recognition of this dual [state-federal] system, this legislation uses the approach that the National Securities Markets Improvement Act of 1996 ("NSMIA") employed...The Committee strongly notes that this legislation *only covers precisely those securities defined in the NSMIA*, principally those securities that are traded on national exchanges."[20]

Congress thus intended for SLUSA preclusion to be limited to publically traded securities, and clearly recognized the vital importance of state law regulation and remedies when dealing with non-publically traded securities, such as private placements.

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19. SENATE REPORT NO. 105–182, S. REP. 105-182, 8, 1998 WL 226714, 7 (emphasis added).

20. SENATE REPORT NO. 105–182, S. REP. 105-182, 5, 1998 WL 226714, 4 (emphasis added).

III. Non-Covered Securities, including Regulation D Private Placement Offerings, are a Significant Source of Securities Fraud

Limited, private placement offerings are not "covered securities" under SLUSA. Congress crafted SLUSA to preserve the enforcement powers of state regulators, and the right of individuals to bring suit under state law for these non-covered securities.

"Rule 506 permits a private issuer to sell unregistered securities to any 'accredited investor' and up to thirty-five other unaccredited purchasers, so long as certain requirements are met." *Brown v. Earthboard Sports USA, Inc.*, 481 F.3d 901, 905-06 (6th Cir. 2007). Regulation D imposes other limitations on private offerings. For example, "there must be no 'general solicitation' of purchasers of the securities; and...the securities must contain restrictions on their resale." *Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 642 n. 5 (11th Cir. 2010). With limited offerings and restrictions on resale, issuers of Regulation D offerings can choose to avoid jurisdictions they perceive as presenting unreasonable litigation costs.

The "professional plaintiffs"[21] at whom SLUSA was aimed are not likely to purchase private placements anticipating litigation. Private placements are sold primarily to accredited investors and generally have very

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21. "Professional plaintiffs who own a nominal number of shares in a wide array of public companies permit lawyers readily to file abusive securities class action lawsuits." HOUSE CONFERENEC REPORT NO. 104-369, H.R. CONF. Rep. 104-369, 32, 1995 U.S.C.C.A.N. 730, 731, 1995 WL 709276, 27.

limited liquidity. So the "professional plaintiffs" could not easily sell them after their lawyers had commenced abusive litigation for which they were purchased.

Rather, investors in Regulation D offerings generally were expected to be the very institutional investors whom Congress preferred to be in control of class action litigation under the PSLRA and SLUSA.[22] In enacting the PSLRA, Congress found that "increasing the role of institutional investors in class actions will ultimately benefit shareholders and assist courts by improving the quality of representation in securities class actions."[23] Because Regulation D offerings are not aimed at the "professional plaintiffs" purchasing a few shares in public companies targeted in the PSLRA and SLUSA, private offerings are not subject to the same concerns about "strike suits" that SLUSA was intended to curb.

Regulation D offerings, however, are fertile ground for defrauding investors. The North American Securities Administrators Association[24] lists private placements

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22. "The Conference Committee seeks to increase the likelihood that institutional investors will serve as lead plaintiffs...." HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 34, 1995 U.S.C.C.A.N. 730, 733, 1995 WL 709276, 28.

23. HOUSE CONFERENCE REPORT NO. 104-369, H.R. CONF. REP. 104-369, 34, 1995 U.S.C.C.A.N. 730, 733, 1995 WL 709276, 28.

24. NASAA is a voluntary association whose membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico.

under Regulation D, Rule 506 among the top ten investor traps.[25] NASAA explains:

> Investors should be aware that, even in the case of legitimate issuers, private placement offerings are highly illiquid, generally lack transparency and have little regulatory oversight. In the United States, the federal exemption for private placement offerings provided under Rule 506 of Regulation D continues to be abused by criminals. Although properly used by many legitimate issuers, unscrupulous promoters use Rule 506 to cloak an otherwise fraudulent offering in legitimacy.[26]

Regulation D offerings constitute a significant and growing portion of the U.S. securities market. "In 2009, 26,485 Regulation D ... offerings were filed with the SEC with an estimated offering total of $609 billion. That compares to 11,000 such offerings in 1996."[27] States cannot review these offerings before they are marketed to investors; the SEC generally does not review them either.[28] Rule 506 offerings are also exempt from

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25. *See* 2011 NASAA's Top Investor Traps, available at <http://www.nasaa.org/3752/top-investor-traps/>.

26. *See* 2011 NASAA's Top Investor Traps, available at <http://www.nasaa.org/3752/top-investor-traps/>.

27. *See* NASAA's Legislative Agenda Item No. 3 – Strengthen State/Federal Collaboration, available at <http://www.nasaa.org/issues-and-advocacy/legislative-agenda-3/>.

28. *See* NASAA's Legislative Agenda Item No. 3 – Strengthen State/Federal Collaboration, available at <http://www.nasaa.org/issues-and-advocacy/legislative-agenda-3/>.

registration under federal securities laws. *Topalian v. Ehrman*, 954 F.2d 1125, 1129 (5th Cir. 1992). With this minimal regulatory scrutiny, "Rule 506 offerings have become the favorite vehicle under Regulation D and many of them are fraudulent."[29]

The passage of the JOBS Act[30] will inevitably and substantially increase the volume of largely unregulated private offerings, with their attendant opportunity for fraud and abuse. Indeed, earlier this year the SEC commenced an action against a promoter who represented that the JOBS Act allowed him to raise *billions* of dollars from investors in what appears to have been a completely fraudulent scheme to dupe investors.[31]

IV. SLUSA Can Preclude More Than Class Actions

This Court thought in *Dabit* that SLUSA would deny plaintiffs only the right to use "class-action" procedure, but would not deny any individual plaintiff or group of fewer than 50 plaintiffs the right to pursue a state law cause of action. 547 U.S. at 87. In fact, however, SLUSA can be stretched to do just that.

"Covered class actions" under SLUSA include both traditional, actual class actions, and other actions joined,

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29. *See* NASAA's Legislative Agenda Item No. 3 – Strengthen State/Federal Collaboration, available at <http://www.nasaa.org/issues-and-advocacy/legislative-agenda-3/>.

30. JUMPSTART OUR BUSINESS STARTUPS ACT of 2012, 112 Pub. L. No. 106, 126 Stat. 314 (codified in scattered sections of 15 U.S.C.).

31. SEC Release 2013-73, April 25, 2013.

consolidated or otherwise proceeding as a single action. 15 U.S.C. § 78 bb (f) (5) (b) (ii) (II). Lower courts have said that SLUSA applies to preclude state law claims even of plaintiffs who opposed joinder or consolidation of their claims with claims of others to aggregate to more than 50. *See, e.g., Backus v. Conn. Comm. Bank, N.A.*, 789 F. Supp. 2d 295, 301 (D. Conn. 2011) (SLUSA "does not limit ... applicability" to consolidation "without a plaintiff's objection").

Stretching SLUSA at the top to expand the meaning of "in connection with the purchase or sale of a *covered* security" will necessarily stretch the result at the bottom. When the financial advisor for the 51st investor in a fraudulent limited offering advises the investor to sell her mutual funds to buy an unregistered, private offering and the investor files her own individual complaint based on state law principles of fiduciary duty, defendants will seek to consolidate her claim with those of the other investors and use SLUSA to preclude her state law rights. There will be no public market for her to liquidate the investment, which will not be listed on any national exchange. Nevertheless, the issuer and sellers will say the fraud was in connection with the sale of covered mutual fund shares, and therefore, the investor's state law claim is precluded by SLUSA. Congress never intended that result.

V. Conclusion

The Fifth Circuit standard for SLUSA preclusion in cases in which investors claim fraud in the purchase of uncovered securities strikes a proper balance among the competing interests of state and federal law, investor rights and protection, and preventing abuse in class action litigation involving nationally traded securities. The Court should affirm the opinion of the Court of Appeals.

Respectfully submitted,

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AMICUS CURIAE BRIEF

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AND
BRIEF

Nos. 12-79, 12-86 and 12-88

In the Supreme Court of the United States

CHADBOURNE & PARKE LLP,
Petitioner,
v.
SAMUEL TROICE, *et al.*,
Respondents.

WILLIS OF COLORADO INCORPORATED, *et al.*,
Petitioners,
v.
SAMUEL TROICE, *et al.*,
Respondents.

PROSKAUER ROSE LLP,
Petitioner,
v.
SAMUEL TROICE, *et al.*,
Respondents.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE SECURITIES INDUSTRY AND FINANCIAL MARKETS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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Rowinski v. Salomon Smith Barney Inc.,
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28 U.S.C. § 1331 22

28 U.S.C. § 1441 22

Other Authorities

Steven M. Puiszis, *Developing Trends with the Class Action Fairness Act of 2005*, 40 J. Marshall L. Rev. 115 (2006). 12

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INTEREST OF *AMICUS CURIAE*[1]

The Securities Industry and Financial Markets Association ("SIFMA") is a securities industry trade association representing the interests of hundreds of securities firms, banks, and asset managers. SIFMA's mission is to support a strong financial industry while promoting investor opportunity, capital formation, job creation, economic growth, and trust and confidence in the financial markets. SIFMA has offices in New York and Washington, D.C. and is the United States regional member of the Global Financial Markets Association. SIFMA regularly files *amicus curiae* briefs in cases that raise matters of vital concern to participants in the securities industry.

SIFMA has appeared before this Court as *amicus curiae* in many cases involving issues arising under the federal securities laws, most recently in *Amgen Inc. v. Connecticut Retirement Plans & Trust Funds*, 133 S. Ct. 1184 (2013), *Credit Suisse Securities (USA) LLC v. Simmonds*, 132 S. Ct. 1414 (2012), *Janus Capital Group, Inc. v. First Derivative Traders*, 131 S. Ct. 2296 (2011), *Erica P. John Fund, Inc. v. Halliburton Co.*, 131

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[1] The parties have consented to the filing of this brief. Petitioners and Respondents have filed with the Clerk of the Court letters granting blanket consent to the filing of *amicus curiae* briefs.

Pursuant to Supreme Court Rule 37.6, counsel for *amicus* certifies that no counsel for a party authored this brief in whole or in part, and no party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, its members, or its counsel made a monetary contribution to this brief's preparation or submission.

S. Ct. 2179 (2011), and *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309 (2011). SIFMA's predecessors also appeared as *amici* in *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006), this Court's leading case interpreting the Securities Litigation Uniform Standards Act of 1998 ("SLUSA").

This case involves important issues concerning the application of SLUSA to preclude state law class actions that allege "a" misrepresentation "in connection with" the purchase or sale of a SLUSA-covered security. Those issues are directly relevant to SIFMA's mission of promoting fair and efficient markets and a strong financial services industry. It is critically important to SIFMA that Congress's efforts to curb vexatious litigation in state law securities class actions by enacting SLUSA not be compromised by plaintiffs who attempt creatively to plead around SLUSA preclusion and stricter uniform national federal securities standards. Such uniform standards are essential to the competitiveness of the U.S. securities markets for both domestic and foreign issuers. *Amicus* therefore has a vital interest in the issues presented in this case, and its views and experience can assist the Court in resolving those issues.

STATUTORY PROVISION INVOLVED

The Securities Litigation Uniform Standards Act, 15 U.S.C. § 78bb(f)(1), provides:

> No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or

> Federal court by any private party alleging—(A) a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security; or (B) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

SUMMARY OF ARGUMENT

SLUSA precludes any covered class action brought under state law that alleges "a" misrepresentation or omission of "a" material fact "in connection with the purchase or sale of *a* covered security." 15 U.S.C. § 78bb(f)(1) (emphasis added). This Court has previously held that SLUSA's "in connection with" language requires only that a misrepresentation "coincide" with a transaction in a covered security. *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 85 (2006).

This case calls upon this Court to address the narrow question of whether a state law class action alleging fraud based on the intentionally false promise that money would be used to purchase covered securities is precluded under SLUSA. This case also presents the question of whether to enforce what Congress explicitly wrote—namely, that "a" *single* misrepresentation that meets the "in connection with" requirement is sufficient to preclude an "action" under SLUSA. As we explain below, this Court need not revisit its prior decisions or expand its prior interpretations of SLUSA to reach a decision here.

First, this case calls for a straightforward application of *Dabit* and related precedent defining "in connection with." Under *Dabit* it is enough that a misrepresentation or omission "coincide" with a securities transaction to trigger SLUSA preclusion. Moreover, SLUSA does not require that securities actually be purchased or sold. Rather, a false representation that a transaction in a covered security would occur is sufficient. Here, Respondents alleged just such a false representation and their actions should have been precluded by SLUSA. The Fifth Circuit, however, applied an unduly narrow interpretation of SLUSA that defies SLUSA's text and this Court's precedent. If allowed to stand, the Fifth Circuit's decision would foment uncertainty and increase risk for entities and individuals connected to the securities industry, encourage vexatious and frivolous litigation (particularly against those who are least culpable), and vindicate gamesmanship and artful pleading at the expense of fealty to congressional intent. This would threaten to increase costs for the securities industry and ordinary investors alike, and to undermine U.S. competitiveness in the capital markets.

Second, this Court should adopt a bright-line rule—required by the text and purpose of SLUSA—under which a *single* misrepresentation or omission in connection with the purchase or sale of a covered security in a state law class action precludes the entire class action. On this issue, Congress could not have been clearer. The text of SLUSA provides that "alleging . . . a" triggering misrepresentation or omission precludes the "class action." This means that *one* triggering misrepresentation—regardless of the

presence of other misrepresentations—precludes the entire class action. Moreover, a bright-line rule also effectuates congressional intent by ensuring predictability and certainty in courts' SLUSA analysis. In contrast, allowing courts to weigh the connection between a covered securities fraud allegation and the rest of the class action would improperly contradict the text and introduce subjectivity into the process, thus encouraging plaintiffs to try to plead around SLUSA by burying SLUSA-triggering allegations amidst other allegations in hopes of avoiding preclusion.

Accordingly, SIFMA respectfully submits that this Court should reverse the decision of the Fifth Circuit and reject an unduly narrow application of SLUSA.

ARGUMENT

I. SLUSA'S "IN CONNECTION WITH" REQUIREMENT IS SATISFIED IN THIS CASE BECAUSE THE ALLEGED FRAUD INVOLVES THE REPRESENTATION THAT COVERED SECURITIES WOULD BE PURCHASED.

As this Court made clear, SLUSA "denies plaintiffs the right to use the class-action device to vindicate certain claims," thereby precluding such actions. *Dabit*, 547 U.S. at 87; *see also Kircher v. Putnam Funds Trust*, 547 U.S. 633, 637 n.1 (2006). The text of SLUSA compels preclusion when four conditions are satisfied: (1) the action is a "covered class action;"[2] (2) "based

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[2] "A 'covered class action' is a lawsuit in which damages are sought on behalf of more than 50 people." *Dabit*, 547 U.S. at 83.

upon the statutory or common law of any State;" (3) that alleges "a misrepresentation or omission of a material fact in connection with the purchase or sale;" and (4) "of a covered security."[3] 15 U.S.C. § 78bb(f)(1); *see also Instituto De Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1345 (11th Cir. 2008) ("*IPM*"). At issue in this action is the third element—SLUSA's "in connection with" requirement.

A. SLUSA's "In Connection With" Requirement Is Satisfied Where The Alleged Fraud Involves A False Representation About Purchasing Covered Securities.

The Court need not revisit or expand its previous decisions defining SLUSA's "in connection with" requirement to decide this case. Rather, this case calls for a straightforward application of existing precedent and a narrow ruling that Respondents' allegations that they were defrauded by intentionally false representations that their money would be re-invested in a covered security warrant preclusion of their state law class actions under SLUSA.

In *Dabit*, this Court held that, to satisfy the "in connection with" element for SLUSA preclusion, "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Dabit*, 547 U.S. at 85. Under well-settled principles, an allegation of a false

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[3] "A 'covered security' is one traded nationally and listed on a regulated national exchange." *Dabit*, 547 U.S. at 83.

representation that money will be used to purchase a covered security is "in connection with" the purchase or sale of a security. Indeed, in *SEC v. Zandford*, this Court expressly endorsed the SEC's interpretation that "a broker who accepts payment for securities that he *never intends to deliver*, or who sells customer securities with intent to misappropriate the proceeds, violates § 10(b) and Rule 10b-5." 535 U.S. 813, 819 (2002) (emphasis added); *see also Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588, 595 (2001) (finding that defendant's sale of stock option that it never intended to honor was "in connection with" the purchase or sale of a security under § 10(b)).[4] Such allegations "describe[] a fraudulent scheme in which the securities transactions" and the purported deceptions "coincide;" that is, they were made "in connection with" one another. *Zandford*, 535 U.S. at 825; *see also Grippo v. Perazzo*, 357 F.3d 1218, 1223–24 (11th Cir. 2004) (finding that in connection with requirement had been met in securities fraud case even though plaintiff "failed to identify any particular security purchased"); *Sulkow v. Crosstown Apparel*

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[4] The prior brief of the United States is not correct that "in connection with" in § 10(b) should be construed broadly. *See* Brief for the United States as *Amicus Curiae* at 9. Certainly, when interpreting § 10(b) in the criminal context, the rule of lenity should apply to § 10(b)'s "in connection with" requirement. *United States v. O'Hagan*, 521 U.S. 642, 679 (1997) (Scalia, J., concurring in part and dissenting in part). Similarly, this Court has also emphasized that it must afford a "narrow scope" to the text of § 10(b) when a broad construction would expand the implied private right of action under § 10(b). *Janus Capital Grp., Inc. v. First Derivative Traders*, 131 S. Ct. 2296, 2303 (2011). Most important, this Court has no reason in this case to address when, if ever, § 10(b) should be construed broadly.

Inc., 807 F.2d 33, 36 (2d Cir. 1986) (finding that actual transfer of securities was not necessary for a misrepresentation to have been made "in connection with the purchase or sale" of a security).[5]

That is the case here. Respondents, who purchased certificates of deposit ("CDs") from Stanford International Bank ("SIB"), alleged that SIB and its owner, Allen Stanford, falsely represented that the CDs were backed by publicly traded securities (*i.e.*, securities covered by SLUSA). Specifically, the complaints alleged that SIB's promotional materials touted that SIB's portfolio was "invested in a well-diversified portfolio of highly marketable securities issued by stable governments, strong multinational companies and major international banks." J.A. 253 (Roland Complaint ¶ 36); J.A. 444 (Proskauer Second Amended Complaint ¶ 41). Respondents further alleged that SIB led Plaintiffs "to believe that their money was being invested in safe, liquid investments that were insured, which was a *material misstatement*." J.A. 715 (Willis Complaint ¶ 180) (emphasis added); *see* J.A. 628 (Willis Complaint ¶ 34). These "safe liquid investments" were predominantly "first grade investment bonds (AAA, AA+, AA) and shares of stock (of great reputation, liquidity and credibility)." J.A. 744 (Willis Complaint Ex. 2). Respondents also alleged that certain defendants falsely represented that "SIB *re*-invested [investor] funds in a 'globally diversified portfolio' of assets," J.A. 250 (Roland Complaint ¶ 23)

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[5] This is also consistent with the definition of "purchase" in the Securities Exchange Act of 1934, which includes "any contract to buy, purchase, or otherwise acquire." *See* 15 U.S.C. § 78c(a)(13).

(emphasis added),[6] and that "SIB took the money it received from the sale of CDs and itself invested in an allegedly diversified portfolio that included stocks, bonds, notes, private equity, precious metals and other commodities, much like a mutual fund." J.A. 458 (Proskauer Second Amended Complaint ¶ 65).

Respondents claim that all of these representations were false. They allege that they were the victims of a fraudulent Ponzi scheme orchestrated by Stanford and various entities under his control where money from new investors was used to pay prior investors. Because Respondents allege a representation that SIB was purchasing at least one covered security, SLUSA's "in connection with" requirement is satisfied. *See Zandford*, 535 U.S. at 819; *Grippo*, 357 F.3d at 1223–24; *Sulkow*, 807 F.2d at 36.[7]

That SIB did not represent that it purchased securities for Respondents in their own names and for

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[6] A "globally diversified portfolio" obviously includes one or more covered securities, especially given SIB's other alleged misrepresentation that the portfolio included "highly marketable securities issued by stable governments, *strong multinational companies and major international banks*." J.A. 253 (Roland Complaint ¶ 36) (emphasis added).

[7] Respondents, however, could not assert a claim under § 10(b). To the contrary, they lack standing to do so because they did not purchase or sell securities. *See Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 733, 749 (1975). As the Court explained in *Dabit*, that requirement is a judge-made limitation of the judicially implied private right of action. 547 U.S. at 80–81. The purchaser or seller requirement is not an application of the "in connection with" language. *Id.*

their own account makes no difference. This Court held in *Dabit* that SLUSA's application does not require the individual plaintiff to have actually purchased or sold securities. *See Dabit*, 547 U.S. at 85. Rather, "it is enough that the fraud alleged 'coincide' with a securities transaction—whether by the plaintiff or by someone else." *Id.*[8] Accordingly, "[f]or purposes of SLUSA," the distinction between plaintiffs who transact in securities and those who do not is "irrelevant." *Id.* at 88–89.

The Fifth Circuit reached the wrong result by applying an unduly narrow interpretation of the "in connection with" requirement. The Fifth Circuit held that "in connection with" means "more than tangentially related," which it described as the "best articulation of the 'coincide' requirement" expressed in *Dabit* and *Zandford*. *Roland v. Green*, 675 F.3d 503, 519–20 (5th Cir. 2012). The Fifth Circuit also added that the covered securities transaction must be more than tangentially related not just to any alleged misrepresentation or omission relating to a covered security, but to the "heart, crux or gravamen" of the defendant's fraud (*i.e.*, to the action itself). *Id.* at 521.

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[8] In finding that the alleged misrepresentations here were made "in connection with" the purchase or sale of a covered security, this Court need not resolve whether false representations in connection with *past* purchases or sales of securities are sufficient to trigger SLUSA. Respondents' allegation that certain defendants misrepresented that SIB "re-invested" investors' assets into covered securities indicates a deception concerning ongoing (present and future) securities transactions. *See* J.A. 250 (Roland Complaint ¶ 23).

The text and natural meaning of SLUSA do not support the Fifth Circuit's restrictive approach. Nowhere in the text of SLUSA does preclusion turn on a showing that there is more than a tangential relationship between the alleged fraud and the "heart, crux or gravamen" of the action as a whole. Rather, SLUSA precludes any "class action" that contains any allegation of "*a* misrepresentation or omission of *a* material fact in connection with the purchase or sale of *a* covered security"—whether or not those allegations are tangential to the crux of the claim. 15 U.S.C. § 78bb(f)(1) (emphasis added). As the Sixth Circuit has held, SLUSA "does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentation in connection with buying or selling securities. It asks whether the complaint includes these types of allegations, pure and simple." *Segal v. Fifth Third Bank, N.A.*, 581 F.3d 305, 311 (6th Cir. 2009).

Where, as here, the alleged fraud involves an intentionally false representation that money would be used to purchase a covered security, SLUSA's "in connection with" requirement is satisfied. The Court need and should go no further to reverse the Fifth Circuit's erroneous application of SLUSA.

B. The Policy Rationale And Purpose Of SLUSA Support Applying SLUSA In This Case.

In 1995, Congress enacted the Private Securities Litigation Reform Act of 1995 (the "Reform Act") to curb abusive securities class action litigation that "was being used to 'injure the entire U.S. economy.'" *Dabit*,

547 U.S. at 81 (quoting House Conference Report). The Reform Act implemented a number of substantive and procedural safeguards—including heightened pleading standards—to deter or dispose of "those suits whose nuisance value outweighs their merits." *Id.* at 82.

Following the passage of the Reform Act, however, plaintiffs sought to end-run "the obstacles set in their path" by filing suits in state court. *Id.* SLUSA was Congress's response to this tactic. In particular, the Senate Report concerning SLUSA stated that "promoting efficient national markets" was a "compelling consideration," and that permitting divergent standards for state and federal class action securities litigation would deter efforts to raise capital. S. Rep. No. 105-182, at 4–5 (1998). This Court has also recognized this policy rationale, declaring that "[t]he magnitude of the federal interest in protecting the integrity and efficient operation of the market for nationally traded securities cannot be overstated." *Dabit*, 547 U.S. at 78; *accord Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994) ("*Central Bank*").

SLUSA has been successful in achieving its goals, resulting in "the effective elimination of state law securities class actions." Eric Talley, *Securities Fraud Class Actions: 70 Years Young*, Rand Rev., Summer 2004, *available at* http://www.rand.org/publications/randreview/issues/summer2004/42.html. As SLUSA intended, "federal courts are now the primary forum for most class actions involving allegations of fraud in the purchase or sale of nationally-traded securities." Steven M. Puiszis, *Developing Trends with the Class*

Action Fairness Act of 2005, 40 J. Marshall L. Rev. 115, 116 (2006).

Protecting SLUSA's policy goals counsels in favor of holding that SLUSA's "in connection with" requirement is satisfied in this case. Indeed, as this Court observed in *Dabit*, "[t]he presumption that Congress envisioned a broad construction [of SLUSA] follows not only from ordinary principles of statutory construction but also from the particular concerns that culminated in SLUSA's enactment." 547 U.S. at 86. "A narrow reading of the statute would undercut the effectiveness of the [PSLRA] and thus run contrary to SLUSA's stated purpose." *Id.*

Congress's objectives would be thwarted if plaintiffs could maintain a state law class action *a*leging an intentionally false representation that the money would be used to purchase a covered security simply because a district court deemed the securities allegations not important enough to the crux of the complaint. Forcing companies to defend class actions in connection with a misrepresentation about a covered security under the substantive and procedural laws of not one jurisdiction (federal) but potentially 50 others amplifies the risks and costs associated with doing business in the securities industry—an issue of particular concern to SIFMA. Those potential legal pitfalls affect not only securities firms, banks, and assets managers, but also entities that provide services to the industry, such as law firms and insurance brokerages, as the Fifth Circuit's decision below makes plain.

The Fifth Circuit's "tangentially related" test in fact creates a perverse incentive for plaintiffs to sue such secondary actors, whose activities are less consequential to the alleged fraud. Such a scenario is not hypothetical; it is precisely what happened in the underlying cases at issue here. Respondents sought to circumvent SLUSA by suing third parties who were not participants in the underlying fraud perpetrated by Allen Stanford and SIB. Those third parties included the trust that served as custodian for Respondents' investments with SIB, the trust's administrator, and SIB's insurance brokers and lawyers. *Roland*, 675 F.3d at 508–09.

This Court has expressed clear disapproval of similar attempts by opportunistic plaintiffs to sue those who have deep pockets but are the least culpable for a purported fraud. In *Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.*, this Court refused to expand liability in private actions under § 10(b) to aiders and abettors, citing the "practical consequences" of doing so, including the danger of allowing "plaintiffs with weak claims to extort settlements from innocent companies." 552 U.S. 148, 163 (2008) (citing *Blue Chip Stamps*, 421 U.S. at 740–41). And, in *Central Bank*, this Court expressed concern that even in unmeritorious cases (of which unfortunately there are many in the securities context), third parties sued for securities fraud "may find it prudent and necessary, as a business judgment, to abandon substantial defenses and to pay settlements in order to avoid the expense and risk of going to trial." 511 U.S. at 189. That is, under federal securities laws, secondary actors such as the defendants in this case would not be subjected to liability. But under the Fifth Circuit's interpretation,

they now could be sued in state-law *class actions* for the very same conduct based on plaintiffs' artful pleading. Such an end-run is exactly what SLUSA was designed to prevent.

The narrow construction of SLUSA endorsed by the Fifth Circuit is not only at odds with decades of precedent from this Court, but also compromises the very purpose of SLUSA to curtail abusive litigation. Permitting state court class action litigation would increase the costs for a host of participants in the securities industry, depriving them of an exclusive federal forum, national standards, and the efficiency of consolidated litigation with coordinated discovery before a single judge. This would make access to the U.S. capital markets more expensive for all investors, who would bear higher costs to compensate for soaring expenses. The end result, as Congress has recognized, is that proliferating securities class action litigation in state courts would deter issuers from raising capital in U.S. markets, sabotaging the competitive footing of U.S. capital markets and the many businesses that serve them.

II. A SINGLE MISREPRESENTATION OR OMISSION "IN CONNECTION WITH" THE PURCHASE OR SALE OF A COVERED SECURITY PRECLUDES THE ENTIRE COVERED CLASS ACTION.

The Fifth Circuit not only applied the wrong standard for interpreting SLUSA's "in connection with" requirement, it went a step further in holding that SLUSA did not preclude a covered class action that indisputably alleged at least one misrepresentation in

connection with the purchase or sale of a covered security.

In this case, the complaints alleged that promotional materials distributed by SIB falsely represented that plaintiffs' moneys were going into covered securities. *Roland*, 675 F.3d at 521. The Fifth Circuit concluded that that alleged misrepresentation was one that ordinarily would be covered by SLUSA. *Id.* Nevertheless, because that alleged misrepresentation was "one of a host of (mis)representations made to [plaintiffs] in an attempt to lure them into buying worthless [certificates of deposit]," the court deemed it "merely tangentially related to the 'heart,' 'crux,' or 'gravamen' of the defendants' fraud" and found that the action was not precluded by SLUSA. *Id.* In short, the Fifth Circuit held that, by alleging a sufficient number of misrepresentations that did *not* trigger SLUSA preclusion, the plaintiffs had effectively canceled the preclusive effect of alleging a misrepresentation in connection with the purchase or sale of a covered security. *See id.*

As discussed below, the Fifth Circuit's analysis and conclusion run contrary to the text and underlying policy of SLUSA and this Court's precedent.

A. The Text Of SLUSA Supports A Bright-Line Rule Precluding Every Covered Class Action That Alleges A Single Misrepresentation In Connection With The Purchase Or Sale Of A Covered Security.

Congress designed SLUSA to be simple in its application and sweeping in its effect. SLUSA provides that "[n]o covered class action . . . may be maintained" based on state law that alleges "*a* misrepresentation or omission of *a* material fact in connection with the purchase or sale of *a* covered security." 15 U.S.C. § 78bb(f)(1) (emphasis added). The clause is thus triggered by "a misrepresentation or omission," "a material fact," and "a covered security"—each in the singular form.

The plain meaning of SLUSA's text therefore indicates that the inclusion in a covered class action complaint of even *one* misrepresentation in connection with the purchase or sale of a covered security precludes the entire *action* (*i.e.*, not merely a particular claim). *See Rowinski v. Salomon Smith Barney Inc.*, 398 F.3d 294, 305 (3d Cir. 2005) (SLUSA's plain language "does not preempt particular 'claims' or 'counts' but rather preempts 'actions,' suggesting that if any claims alleged in a covered class action are preempted, the entire action must be dismissed"); *accord Proctor v. Vishay Intertech. Inc.*, 584 F.3d 1208, 1221 (9th Cir. 2009) ("SLUSA provides for the removal of any covered class action, not just individual claims.") (internal citation omitted). To suggest otherwise, as the Fifth Circuit has done, is to manufacture ambiguity and uncertainty where none exists.

SLUSA's unambiguous text accordingly supports a concise bright-line rule for preclusion analysis: when the complaint alleges "a" single misrepresentation or omission of "a material fact" concerning "a" covered security, the "action" should be precluded. Injecting other variables—such as the weight of the connection between a covered securities transaction and the totality of the claims in the action—into the analysis is textually indefensible.

Several circuit courts have properly endorsed a bright-line test for SLUSA preclusion. The Sixth Circuit has stated that SLUSA "does not ask whether the complaint makes 'material' or 'dependent' allegations of misrepresentation in connection with buying or selling securities. It asks whether the complaint *includes* these types of allegations, pure and simple." *Segal*, 581 F.3d at 311 (emphasis added); *accord IPM*, 546 F.3d at 1350 ("If a single claim premises liability on multiple factual theories, then that claim would be precluded if at least *one* of those theories hinges on representations made 'in connection with the purchase or sale' of a security."). As the Eleventh Circuit noted, SLUSA "does not require district courts to act like a prospector panning for a few non-precluded theories amid a river of precluded ones." *Id.*

SLUSA asks a basic "yes" or "no" question: does the state law class action include any allegation of a misrepresentation or omission of a material fact in connection with the purchase or sale of a security? Because the answer here is yes, the "class action" is precluded.

B. Policy Considerations Support A Bright-Line Rule.

Policy considerations also support a bright-line test that precludes a covered class action whenever plaintiffs allege a single misrepresentation in connection with the purchase or sale of a covered security.

First, a bright-line test would ensure consistent and predictable results in "an area that demands certainty and predictability." *Pinter v. Dahl*, 486 U.S. 622, 652 (1988). Uncertainty "deter[s] beneficial conduct and breed[s] costly litigation," but those problems can be mitigated if courts "craft legal rules with bright lines." Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 Duke L.J. 945, 962 (1993) (cited approvingly in *Central Bank*, 511 U.S. at 189). Uncertainty also encourages plaintiffs to try to bury the existence of SLUSA-triggering allegations in a complaint through artful pleading.

The Fifth Circuit's decision improperly adds substantial uncertainty to the preclusion analysis by relying on inherently imprecise and subjective determinations about the connection between a plaintiff's securities fraud allegations and the rest of the action. One flaw of this approach is that it encourages case-by-case litigation and would inevitably foster conflicting results. Left unanswered by the Fifth Circuit are questions such as: How many non-preclusive misrepresentations must be alleged to outweigh an allegation of securities fraud? If one securities fraud allegation is not enough, are two or

three? Do dollar amounts matter? And generally, how should a court measure or determine whether the preclusive securities fraud is close enough to the "heart, crux or gravamen" of the overall alleged scheme?

The answers to those questions will vary unpredictably from case to case. Each new complaint's facts will present unique considerations, and each court might weigh differently whether one or more alleged misrepresentations in connection with the purchase or sale of a covered security is sufficient to satisfy the "heart, crux or gravamen" test. Decisions would thus be "made on an ad hoc basis, offering little predictive value to participants in securities transactions." *Pinter*, 486 U.S. at 652. Certainty and predictability under the Fifth Circuit's test would be utterly elusive. The only predictable result of endorsing such an interpretation would be an increase in vexatious and frivolous class actions and the attendant expense of defending and settling those suits in a multitude of jurisdictions under varying state laws. *See Central Bank*, 511 U.S. at 189.

Second, a bright-line test effectuates Congressional intent by preventing plaintiffs from exploiting the pleading loophole opened by the Fifth Circuit's decision. As discussed above, Respondents in this case seek to avoid preclusion under SLUSA despite the fact that their complaint indisputably alleged "a" misrepresentation in connection with the purchase or sale of "a" covered security. Respondents' strategy was to dilute the significance of that allegation by populating the complaint with numerous *additional* allegations of misrepresentations that were not covered

by SLUSA. *Roland*, 675 F.3d at 521. The Fifth Circuit's acceptance of this tactic invites future plaintiffs to avoid SLUSA preclusion simply through artful pleading. A bright-line test that requires courts to preclude any action in which plaintiffs allege a single securities fraud would close this loophole.

Third, a bright-line test also affords certainty to plaintiffs. The plaintiff, as "master of the complaint," has the ultimate responsibility for the allegations contained therein. *Segal*, 581 F.3d at 312. It should come as no surprise to plaintiffs that the inclusion of one or more securities fraud allegations in a class action compels preclusion under SLUSA, no matter what other allegations they add to their complaint. *Id.* ("SLUSA may be unforgiving when it applies, but it details in clear language when that is so."). Moreover, Plaintiffs wishing to avoid preclusion under SLUSA always have the option of foregoing the class action device and bringing state law claims in individual actions.

C. This Court's Removal Jurisdiction Precedent Supports A Bright-Line Rule.

A bright-line rule is also supported by this Court's well-established precedent that federal question and removal jurisdiction exists when one or more—but not all—claims in an action present federal questions. SLUSA is both a preclusion statute and a removal jurisdiction statute. SLUSA vests federal courts with exclusive jurisdiction over certain state law class actions and provides for their removal to federal court. *See* 15 U.S.C. § 77bb(f)(1)–(2).

Before SLUSA was enacted it was already well established that a *single* claim over which federal question jurisdiction exists enables the exercise of jurisdiction over and removal of *all* claims in the "action" under 28 U.S.C. §§ 1331 and 1441. *See Franchise Tax Bd. of Cal. v. Constr. Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 13 (1983) (where a complaint sets forth two causes of action, "if *either* comes within the original jurisdiction of the federal courts, removal [is] proper as to the *whole case*") (emphasis added); *accord City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 164–65 (1997) ("federal courts' original jurisdiction over federal questions carries with it jurisdiction over state law claims that 'derive from a common nucleus of operative fact'") (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)); *see also Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 561 (2005) (noting that 28 U.S.C. § 1331 provides for "original jurisdiction in all actions where *at least one claim* meets the . . . requirements" for jurisdiction). This Court has emphasized that "statutory references to an 'action' have *not* typically been read to mean that every claim included in the action must meet the pertinent requirement." *Jones v. Bock*, 549 U.S. 199, 221 (2007) (emphasis added) (citing *Allapattah*, 545 U.S. at 560–63, and *College of Surgeons*, 522 U.S. at 166).

SLUSA follows this familiar structure. Under SLUSA, "alleging" "a" misrepresentation or omission of "a" material fact in connection with the purchase or sale of "a" covered security confers exclusive federal jurisdiction over and supports removal of the "class action." 15 U.S.C. § 78bb(f)(1)–(2). Because SLUSA confers federal and removal jurisdiction over an entire

"class *action*" based on "alleging" one trigger, it would rewrite the statute to add a requirement that the triggering allegation be weighed against other allegations.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit Court of Appeals should be reversed.

Respectfully submitted,

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May 10, 2013

AMICUS CURIAE BRIEF

Nos. 12-79, 12-86 and 12-88

In the Supreme Court of the United States

CHADBOURNE & PARK LLP,
Petitioner,

v.

SAMUEL TROICE, ET AL.,
Respondents.

WILLIS OF COLORADO INCORPORATED, ET AL.,
Petitioners,

v.

SAMUEL TROICE, ET AL.,
Respondents.

PROSKAUER ROSE LLP,
Petitioner,

v.

SAMUEL TROICE, ET AL.,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF SIXTEEN LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are sixteen law professors from throughout the United States with expertise in corporate and securities law and federal jurisdiction, and who have previously published on issues relating to securities litigation, shareholder suits, breaches of fiduciary duties, state law remedies for corporate malfeasance, financial regulation, and federal jurisdiction over class actions.[2] *Amici* have no personal stake in the outcome of this case, but have a public policy interest in seeing that the law under the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") be interpreted in a way that does not preclude investors from using state courts to pursue claims seeking traditional state law remedies for acts that do not involve covered securities within the meaning of the federal securities laws.

Amici agree with Respondents that SLUSA does not preclude a state-law class action alleging a fraudulent scheme that involves misrepresentations about transactions in SLUSA-covered securities when the fraudulent scheme itself does not involve a purchase or sale of a covered security. *Amici* submit this brief to explain more fully the jurisprudence and legislative history as they relate to the intended distinction between covered and non-covered securities, as well as how cases not involving securities traded on a national exchange were not meant to fall within SLUSA's purview.

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that, in consultation with *amici*, they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for *amici* also represent that all parties have consented to the filing of this brief. The parties have filed their blanket consents with the Clerk.

[2] A full list of *amici*, including their institutional affiliations, is set forth in the Appendix to this brief.

SUMMARY OF ARGUMENT

Petitioners' overly broad interpretation of SLUSA would preclude plaintiffs from filing class actions under state law despite the fact that, under well-established law, those same cases must be brought only under state law because they do not allege fraud in connection with securities traded on a national exchange. This Court is thus presented with the opportunity to resolve confusion as to the scope of SLUSA's preemption of state-law claims brought as class actions and, by so doing, ensure that state courts retain their traditional ability to develop their law and resolve disputes over breaches of fiduciary duty, in addition to other common business torts and consumer claims that would not be grounds for a federal securities law claim because the claims involved do not involve an action *in connection with the purchase or sale of nationally-traded securities.*

Legislative action and legislative history support the conclusion that for a transaction to be "in connection with the purchase or sale of a covered security," the purchase or sale must involve a security traded on a national exchange. 15 U.S.C. § 77r(b). For decades, this Court's interpretation of § 10(b) of the Securities Exchange Act of 1934 ("1934 Act") and Rule 10b-5, 17 C.F.R. § 240.10b-5, in combination with its observations on the nature of national securities exchanges as relevant to SLUSA, has made clear that only challenges to transactions involving nationally-traded securities can be resolved in federal court. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 81 (2006); *see also Morrison v. Austl. Nat'l Bank*, 130 S. Ct. 2869, 2887-88 (2010). Plaintiffs who allege a breach of fiduciary duty that did not occur in connection with the purchase or sale of a nationally-traded security--or in which the fraud is predicated on a financial instrument that is backed by, but is not itself, a nationally-traded security--cannot bring their claims under federal securities laws and must bring their claims under state law.

At the same time, SLUSA bars most securities class actions[3] brought under state law if the action is brought by "any private party alleging a misrepresentation or omission of material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). If such a suit is brought in state court, SLUSA permits its timely removal to federal court. 15 U.S.C. § 78bb(f)(2). Once removed, SLUSA requires the case to be dismissed because it is preempted by federal securities laws. 15 U.S.C. § 78bb(f)(1).

This aspect of SLUSA may make sense as it applies to a plaintiff who could have brought the action in federal court but, for whatever reason, failed to do so. But the interpretation of SLUSA suggested by Petitioners in this case – and the interpretation adopted by several courts of appeals – will have the effect of barring state-law class actions by investors for claims of pure breaches of fiduciary duty, as well as by consumers deceived in a situation where the fraud involved covered securities at some point in the chain, where plaintiff could not have brought the claim under the federal securities laws because the conduct alleged is not a violation of federal laws prohibiting fraudulent purchases or sales of covered securities. Under this Court's precedents, run-of-the-mill fiduciary-duty claims, consumer class actions, and common business torts cannot be brought under federal securities law because they do not allege conduct within the scope of § 10(b) and Rule 10b-5. Under these circumstances, the Petitioners' interpretation of SLUSA effectively eliminates liability for such claims in every case where the action is brought on behalf of a class of similarly situated individuals and a covered security bears only an attenuated connection to the challenged transaction. That result is

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[3] Certain actions, based on the law of the state of incorporation and referred to as "Delaware carve-outs," are preserved by SLUSA. *See* 15 U.S.C. § 77p(d)(1)(A). Other preserved actions provided for by SLUSA include actions that are exclusively derivative in nature and certain state and trustee actions. 15 U.S.C. § 77p(f)(2)(B); 15 U.S.C. § 78bb(f)(3)(B)-(C).

illogical as a matter of statutory construction, and does nothing to further Congress's stated purpose in enacting SLUSA. It also substantially curtails the ability of states to regulate the traditionally state-based realm of corporate law, as well as other areas that our federal system has long recognized are the exclusive purview of the states in the absence of explicit federal preemption.

The straightforward facts of this case make clear that Plaintiffs' claims were not preempted by SLUSA. Plaintiffs were purchasers of certificates of deposits ("CDs") issued by Stanford International Bank ("SIB" or "the Bank"). The CDs themselves were not "covered securities" within the meaning of SLUSA. Because the Bank never registered the CDs with the SEC, they were not traded on a national exchange. *See* 15 U.S.C. § 77r(b). The CDs offered a fixed rate of return and were not tied to the success of any of the Bank's purported investments in the "highly marketable securities issued by stable national governments, strong multinational companies and major international banks." *Roland v. Green*, 675 F.3d 503, 509 (5th Cir. 2012) (quoting alleged misrepresentations by the SEI Investments Company). Plaintiffs were not directly or indirectly buying an interest in SIB's covered securities. They merely invested money in CDs.

Here, nobody purchased or sold a covered security. The complaints alleged that SIB invested the proceeds from the CD sales in Antiguan real estate and squandered the money on Allen Stanford's lavish lifestyle. The fraud was complete on the sale of the CDs, and did not depend on a subsequent purchase or non-purchase of any covered securities. These lawsuits therefore did not allege a fraudulent scheme "involving," "dependent upon," "coinciding with," or "more than tangentially related" to misrepresentations about covered securities.

Contrary to Petitioner's argument, SLUSA does not apply to alleged misrepresentations "in connection with a covered security." To the contrary, the statute applies only to alleged misrepresentations "in connection with the *purchase*

or sale of a covered security." *See* 15 U.S.C. § 78bb(f)(1)(A) (emphasis added). Accepting Petitioners' interpretation would render the "purchase or sale" language meaningless. The alleged misrepresentation must be in connection with a purchase or sale of covered securities.

ARGUMENT

I. Congress Enacted the PSLRA to Require Purchasers and Sellers of Nationally-Traded Securities to Bring Class Action Fraud Claims in Federal Court Under Federal Law

A. Covered Securities Under the 1934 Act and SLUSA Include Only Nationally-Traded Securities.

Section 10(b) of the 1934 Act broadly prohibits fraud "in connection with the purchase or sale of any security." 15 U.S.C. § 78j(b). SLUSA constricts the jurisdiction of state-law claims brought in a class action that could have been brought under § 10(b): "No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging a misrepresentation or omission of a material fact in connection with the purchase or sale of a covered security." 15 U.S.C. § 78bb(f)(1)(A). A "covered security" is defined as "a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 18(b) of the Securities Act of 1933, at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under the Securities Act of 1933 . . . ." 15 U.S.C.

§ 78bb(f)(5)(E) (internal citations omitted). Section 18(b) of the Securities Act of 1933 ("1933 Act") notes that a "security is a covered security if such security is":

> (A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);
>
> (B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or
>
> (C) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

15 U.S.C. § 77r(b). Additionally, a "security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940," and the SEC may prescribe covered securities by rule for qualified purchasers and by rule for transactions substantially similar for those covered under earlier sections. 15 U.S.C. § 77r(b).

This Court has held that to satisfy the "in connection with" requirement of § 10(b) and Rule 10b-5 a fraud must "coincide" with a securities transaction. The requirement was first addressed by this Court in *Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6 (1971). In *Bankers Life*, the purchase price of stock was obtained by misappropriating the proceeds of the sale of Treasury bonds where it appeared that the proceeds were supposed to be used to purchase a certificate of deposit. *Id.* at 8-9. This Court concluded that the "in connection with" requirement was met because the seller of securities had been harmed by being deprived of the proceeds of the sale of bonds through "deceptive practices touching its sale of securities." *Id.* at 12-13. A quarter of a century later, in *United States v. O'Hagan*, 521 U.S. 642 (1997), this Court considered whether trading in securities of a company that was based on misappropriated information represented fraud "in connection with" a securities transaction. This Court concluded that such fraud was indeed "in connection with" the purchase of stock because the misappropriation of information "coincide[d]" with the trading of stock. *Id.* at 656. This Court reasoned that the "in connection with" requirement was satisfied because the fraud was consummated when the information was used to purchase or sell securities, not when the confidential information was obtained.[4] *Id.* Finally, *SEC v. Zandford*, 535 U.S. 813

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[4] This Court specifically noted that this misappropriation theory had limits and that not all misappropriations involving securities would be subject to § 10(b). Thus, this Court suggested that Rule 10b-5 would not apply when a person obtains money by fraud and then uses that money to purchase securities, reasoning that the fraud would lack sufficient connection to the securities transaction because the money obtained fraudulently could be used for any number of purposes. *O'Hagan*, 521 U.S. at 656.

(2002), was a case involving a broker's theft of the proceeds from the sale of his clients' securities. This Court concluded that the SEC had adequately alleged the broker's conduct met the "in connection with" requirement because the brokers' fraudulent practices and the subsequent sale of securities were not independent events: the fraud "coincided" with the stock sales. *Id.* at 820.

B. The Legislative History of Both the PSLRA and SLUSA Indicates that Congress Did Not Intend to Expand the Scope of the 1934 Act and Targeted Only Nationally-Traded Securities

1. The PSLRA

Congress enacted the Private Securities Litigation Reform Act of 1995 ("PSLRA"), Pub. L. No. 104-67, 109 Stat. 737, 738, 750, 758-59, to curb what it viewed as "nuisance filings, targeting of deep-pocket defendants, [and] vexatious discovery requests." *Dabit*, 547 U.S. at 81. Congress sought to accomplish these objectives by, inter alia, imposing a heightened pleading standard in all fraud actions brought pursuant to the federal securities laws. *Id.* For example, the PSLRA requires that "securities fraud complaints 'specify' each misleading statement; that they set forth facts 'on which [a] belief' that a statement is misleading was 'formed'; and that they 'state with particularity facts giving rise to a strong inference that the defendant acted with the required state of mind.'" *Id.* at 81-82 (quoting *Dura Pharms., Inc. v. Broudo*, 544 U.S. 336, 345 (2005) (quoting 15 U.S.C. §§ 78u-4(b)(1), (2))).

The PSLRA was manifestly not, however, intended to affect suits that do not involve fraud in connection with the purchase or sale of nationally-traded securities. The PSLRA makes clear that it applies to "each private right of action arising under this [Act]" – in other words, to claims for relief that arise under the 1934 Act as of the time of the PSLRA's enactment. 15 U.S.C. § 78u-4(a)(1). Suits not involving fraud in connection with the purchase or sale of nationally-traded securities undisputedly did not arise under the 1934 Act at the time Congress enacted the PSLRA, as Congress was keenly aware. To the contrary, the PSLRA was concerned with the "federal interest in protecting the integrity and efficient operation of the market for nationally traded securities." *Dabit*, 547 U.S. at 78.

Congress's attempt to curtail securities litigation had an unintended consequence: instead of filing their claims in federal courts, subject to the PSLRA's heightened pleading standard, many investors began filing their claims under state law in state courts, thus attempting to bypass the PSLRA's requirements altogether. *See Dabit*, 547 U.S. at 82.

2. SLUSA

Congress enacted SLUSA to "stem this shif[t] from Federal to State courts and prevent certain State private securities class action lawsuits alleging fraud from being used to frustrate the objectives of" the PSLRA. *Dabit*, 547 U.S. at 82. SLUSA prohibits a party from maintaining a claim arising under state law that alleges:

> (1) an untrue statement or omission of material fact in connection with the purchase or sale of a covered security; or

> (2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

15 U.S.C. § 77p(b); *see also* 15 U.S.C. § 78j(b).

SLUSA does not define the phrase "in connection with the purchase or sale of a covered security." But that language, in addition to SLUSA's references to "untrue statement[s] or omission[s] of material fact" and the "use[] or employ[ment of] any manipulative or deceptive device or contrivance," closely tracks the implied right of action under § 10(b) and the heightened pleading standard imposed by the PSLRA. "[N]ot only did Congress [in SLUSA] use the same words as are used in § 10(b) and Rule 10b-5, but it used them in a provision that appears in the same statute as § 10(b)." *Dabit*, 547 U.S. at 86.

SLUSA's drafters borrowed the phrase "covered security" from the National Securities Market Improvement Act ("NSMIA"), Pub. L. No. 104-290, 110 Stat. 3416 (1996). That statute, which allocates regulatory authority between federal and state governments, provides that the federal government regulates "covered securities" while states maintain their traditional authority to regulate other securities. *See* H.R. Rep. No. 105-803, at 13 (1996). Seeking to eliminate duplicative regulation, Congress made clear that the NSMIA was not intended "to alter, limit, expand, or otherwise affect in any way any State statutory or common law with respect to fraud or deceit . . . in connection securities or securities transactions." H.R. Rep. No. 104-622, at 34 (1996). Rather, the states were to retain their authority to regulate "small, regional or intrastate securities offerings." *Id.* at 16. In enacting SLUSA, in other words, Congress

intended to preserve the enforcement powers of the State securities regulators. *See* Pub. L. No. 105-353, 112 Stat. 3231.

In interpreting SLUSA, therefore, courts should be mindful that the statute is part of the 1934 Act, which "should be construed not technically and restrictively, but flexibly to effectuate its remedial purposes." *Zandford*, 535 U.S. at 819. Congress did not intend to "cavalierly" preempt state law causes of action when it enacted SLUSA, particularly those claims for relief, such as traditional common law claims for fraud or breach of fiduciary duty claims, which were not based upon regulation of a national securities market. *Dabit*, 547 U.S. at 87.

Dabit clarified what it means to make an untrue statement or omission of material fact "in connection with the purchase or sale of a covered security" for purposes of SLUSA. *Id.* at 84-86. The *Dabit* plaintiffs had brought state-law claims in federal court based on diversity jurisdiction, alleging that they were fraudulently induced to hold, or to advise their clients to hold (but not to buy or sell) certain stocks far longer than they would have had they known the true value of the stock. *Id.* The Second Circuit Court of Appeals held that SLUSA did not bar the state-law claims in *Dabit* because the claims were based on allegedly fraudulent inducements to hold stock, rather than to buy or sell it, and thus the alleged fraud was not undertaken "in connection with the purchase or sale" of the securities in question. *Id.* at 77. This Court reversed, holding that the SLUSA bar applies not only to buyers and sellers of securities but also to holders of securities. *Id.* at 77-78. This Court reasoned that a narrower holding would "undercut the effectiveness" of the PSLRA

and would "run contrary to SLUSA's stated purpose." *Id.* at 86.

Several courts of appeals have had occasion to address the question when fraud "coincides" with a covered security under SLUSA. *See Romano v. Kazacos*, 609 F.3d 512, 522 (2d Cir. 2010) (fraud has to induce the covered transaction and the claims must "necessarily involve" and "necessarily rest" on them); *Segal v. Fifth Third Bank*, 581 F.3d 305, 310 (6th Cir. 2009) ("coincide" requirement met where plaintiff's allegations "depend" upon transactions in covered securities); *Madden v. Cowen & Co.*, 576 F.3d 957, 966 (9th Cir. 2009) (misrepresentations and omissions must be "more than tangentially related" to purchase of covered securities); *Instituto de Prevision Militar v. Merrill Lynch*, 546 F.3d 1340, 1348 (11th Cir. 2008) (fraud has to have "induced" plaintiff to make a purchase or sale of covered securities or the scheme must have "coincided and depended upon a purchase or sale" of covered securities); *Siepel v. Bank of Am.*, 526 F.3d 1122, 1127 (8th Cir. 2008) ("coincide" requirement is less stringent than requiring non-disclosure in order to relate to a decision to purchase a covered security); *Gavin v. AT&T Corp.*, 464 F.3d 634, 639 (7th Cir. 2006) ("coincide" requirement requires plaintiff to allege fraud "involving" covered securities).

While the courts of appeals have employed modestly different language, they all interpret *Dabit's* "coincide" requirement in essentially similar terms. Regardless of the precise verbal formulation employed, SIB's sales of CDs in this case were not "in connection with" the purchase or sale of covered securities. All of the tests require, at a minimum, a direct or indirect purchase or sale of covered securities, or a

contract to do so. On these facts, each and every court of appeals would rule for Respondents.

No such concerns are raised by claims—such as the fiduciary-duty and other state law claims at issue in this case—that are not based on fraud in connection with the purchase, sale or holding of nationally-traded securities. Permitting such claims to proceed in state court does not contradict or subvert any provision of the PSLRA and SLUSA.

3. Legislative History

A defendant does not commit federal securities fraud that subjects it to a lawsuit removable pursuant to SLUSA unless the fraud is committed "in connection with the purchase or sale of a covered security." That a "covered security" means only securities traded on a national exchange is entirely consistent with congressional intent in enacting both the 1934 Act and SLUSA. *See* 144 Cong. Rec. 10780 (1998) (statement of Rep. Anna Eshoo, lead Democratic Sponsor) ("[SLUSA] assur[es] that lawsuits involving nationally traded securities remain in Federal courts where they have always been heard. This legislation is limited in scope and only affects class action lawsuits involving nationally traded securities. Lawsuits traditionally heard in the Federal Courts will continue to be heard there under the Federal law. State regulators would continue to have the ability to enforce State laws and bring civil actions."); Prepared Statement of U.S. Senator Alphonse M. D'Amato, *Regarding the Mark-Up of S. 1260, The Securities Litigation Uniform Standards Act* (Apr. 29, 1998), *available at* http://www.techlawjournal.com/congress/slusa/80429dam.htm (last visited July 23, 2013) ("This legislation is narrowly focused. It will apply only to 'national' securities that are

traded on National exchanges and on NASDAQ's National Market System.").

The "federal interest in protecting the integrity and efficient operation of the market for nationally traded securities," *Dabit*, 547 U.S. at 78, emanated from the national nature of that market: "companies can not control where their securities are traded after an initial public offering [and] companies with publicly-traded securities can not choose to avoid jurisdictions which present unreasonable litigation costs. Thus, a single state can impose the risks and costs of its peculiar litigation system on all national issuers." H.R. Rep. No. 105-803, at 15 (1998) (Conf. Rep.). SLUSA remedies the problem by preventing state courts from imposing their corporate law regimes on nationally traded securities: "The solution to this problem is to make Federal court the exclusive venue for most securities fraud class action litigation involving nationally traded securities." *Id.*

Nationally-traded securities also present their own national issues regarding market efficiency and information for investors; SLUSA was intended to match the national scope of such information with federal jurisdiction. "[T]he securities governed by this bill—and it is important to emphasize this point—are by definition trading on national exchanges. As we all know, securities traded on national exchanges are bought and sold by investors in every State, and those investors rely on information distributed on a national basis." 144 Cong. Rec. 4799, Remarks of Senator Lieberman (1998); *see also* 144 Cong. Rec. 8963, Remarks of Senator Dodd (1998) ("While the frustration of the objectives of the 1995 Reform Act provide[s] compelling reason[] for congressional action, it is equally important to consider whether the proposition of creating a national standard of

liability for nationally-traded securities makes sense in [its] own right. I certainly believe it does. In 1996, Congress passed the 'National Securities Markets Improvement Act' which established a precedent of national treatment for securities that are nationally-traded. In that act, Congress clearly and explicitly recognized that our securities markets were national in scope and that requiring that the securities that trade on those national markets comply with 52 separate jurisdictional requirements both afforded little extra protection to investors and imposed unnecessarily steep costs on raising capital.").

SLUSA's limitation to nationally-traded securities was part of the Act's preferred regime for enforcement of the federal securities laws. While Congress enacted SLUSA clearly intending to subject nationally-traded securities to both federal jurisdiction and the PSLRA's heightened pleading requirements, it also recognized the importance of state law regimes in the regulation of non-nationally traded securities. "[I]n order to avoid . . . thwarting . . . the purpose of the [PSLRA], national standards for nationally traded securities must be enacted, while preserving the appropriate enforcement powers of state regulators, and the right of individuals to bring suit." S. Rep. 105-182, at 8 (1998); *see also* 144 Cong. Rec. 8963, Remarks of Senator Dodd (1998) ("It will not affect any suit, class action or otherwise, against penny stocks or any stock that is not traded on a national exchange."); 15 U.S.C. § 78c(a)(51)(B) (defining a "penny stock" as a "security or class of securities" designated by the SEC as "traded other than on a national securities exchange or through an automated quotation system").

By contrast, claims such as those involved in this case which are predicated solely on state law (here, Texas and

Louisiana) that do not allege a fraud in connection with the purchase or sale of a covered security manifestly do not fall within the scope of § 10(b) and Rule 10b-5. Claims relating to fraud in privately offered securities, or securities traded only on international markets, are insufficient to state a claim under those provisions. *See Zandford*, 535 U.S. at 822 (the securities fraud must "coincide" with a securities transaction in order to state a claim under § 10(b) and Rule 10b-5); *Thompson v. RelationServe Media, Inc.*, 610 F.3d 628, 680 (11th Cir. 2010) (a 10b-5 claim cannot survive when predicated on "exempt private offerings"). Because a plaintiff class cannot maintain a federal securities claim, under Petitioners' view, any reading of SLUSA that federally preempts these or similar claims extinguishes liability for these claims. There is no indication that Congress, in enacting § 10(b) and SLUSA, meant to bring all—or any--of these types of claims under the purview of SLUSA.

4. A Sweeping Interpretation of SLUSA is Inconsistent with Legislative Intent

SLUSA imposes a steep penalty on plaintiffs who could have brought their securities class actions under federal law but chose to plead them under state law. Not only are defendants in such cases permitted to remove to federal court, they may seek immediate dismissal once they arrive there. 15 U.S.C. § 78bb(f)(2). Given Congress's stated goal of preventing plaintiffs from making an end-run around the PSLRA's heightened pleading requirements, SLUSA's steep penalty may well be appropriate where plaintiffs could have brought their action under federal law in federal court but declined to do so. But it is utterly illogical to punish plaintiffs for doing what this Court's well-settled precedent has for

decades required them to do, to wit, litigate their claims for non-covered securities and other financial instruments under state law, rather than under federal securities law.

The sweeping interpretation of SLUSA that Petitioners urge leaves claims related to securities that are not traded on a national exchange in a legal no man's land, in which there exists no possibility of a collective remedy under either federal or state law. Denial of class relief under both federal and state law as a matter of statutory interpretation would mean no relief at all. This Court has recognized that "[t]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997). Search as one will, there is absolutely nothing in SLUSA's legislative history that would allow this Court to infer that Congress intended to leave investors in non-covered securities, who may realistically be able to seek redress only by banding together in a class action, without any remedy for harms related to breaches of fiduciary duty or other purely state law claims that involve privately traded or other non-covered securities, as opposed to the nationally-traded securities regulated by the 1933 and 1934 Acts.

"Corporations are creatures of state law." *Cort v. Ash*, 422 U.S. 66, 84 (1975). Unless federal law "expressly" imposes additional obligations with respect to the corporation's treatment of its shareholders, state law controls the internal affairs of the corporation. *Id.*; *see also Burks v. Lasker*, 441 U.S. 471, 478 (1979) (noting that corporations are governed by state law because they are creatures of state law). Indeed, "[n]o principle of corporation law and practice

is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders." *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). This Court has been reluctant to interpret federal law in a way that would "invite [federal] litigation beyond the immediate sphere of securities litigation and in areas already governed by functioning and effective state-law guarantees." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 161 (2008).

State common law breach of fiduciary duty actions provide an important remedy not available under federal law. *Gochnauer v. A.G. Edwards & Sons, Inc.*, 810 F.2d 1042, 1049 (11th Cir. 1987) ("[S]ince not every instance of financial unfairness or breach of fiduciary duty will constitute a fraudulent activity under § 10(b) or Rule 10b-5, federal courts should be wary of foreclosing common law breach of fiduciary duty actions which supplement existing federal or state statutes."). Interpreting SLUSA as Petitioners suggest represents an unwarranted federal intrusion into fiduciary duty questions that have historically been the purview of the states, and will substantially impair the state's historic ability to provide effective remedies for violations of state-created corporate law. *See, e.g., Gray v. Seaboard Secs., Inc.*, 241 F. Supp. 2d 213, 219 (N.D.N.Y. 2003), *rev'd in part*, 126 Fed. Appx. 14 (2d Cir. 2005) (an overly broad interpretation of SLUSA "is at odds with the well-settled principle that federalism concerns impel the presumption that Congress did not intend to displace state law"); *United Paperworkers Int'l Union v. Int'l Paper Co.*, 801 F. Supp. 1134, 1140 (S.D.N.Y. 1992) ("[F]ederal securities laws do not reach ordinary instances of corporate mismanagement or breaches of

fiduciary duty" because allowing so would be a "serious affront to federalism.").

There is a strong presumption against finding Congressional intent to preempt state-law causes of action. *Bates v. Dow AgroSciences LLC*, 544 U.S. 431, 449 (2005) ("Because the states are independent sovereigns in our federal system," it is "presumed that Congress does not cavalierly preempt state-law causes of actions.") (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)); *see also Medtronic*, 518 U.S. at 485 (in all preemption cases, the court starts with the assumption that the federal statute did not supersede the State's "unless that was the clear and manifest purpose of Congress") (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The presumption against preemption is particularly strong where a conclusion that claims are preempted would eliminate remedies traditionally available under state law. *Bates*, 544 U.S. at 449 ("If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly."). The presumption applies to both the "question whether Congress intended any pre-emption at all" and also "to questions concerning the scope of its intended invalidation of state law." *Medtronic*, 518 U.S. at 485.

SLUSA's plain language and its legislative history dispel any doubt that Congress intended to preempt only those suits relating to covered securities—i.e., nationally-traded securities—that had been the subject of the PSLRA, and to leave unaffected traditional state-law breach of fiduciary duty class action suits, even if they involved private, international, or other non-covered securities. In the words of Senator Dodd (SLUSA's Senate co-sponsor), "[SLUSA] will [allow Congress to address this state litigation problem] in a

very targeted and narrow way, essentially preempting only those class actions that have recently migrated to State court, while leaving traditional State court actions and procedures solidly in place . . . . This legislation has been carefully crafted only to affect those types of class actions that are appropriately heard on the Federal level." 143 Cong. Rec. S10477 (1997); *see also* 144 Cong. Rec. 8963, Remarks of Senator Dodd (1998) ("The legislation under consideration today accomplishes that goal in the narrowest, most balanced way possible. Before I discuss what the legislation will do, let me point out a few things that it won't do: . . . It will not affect any suits based upon corporate disclosure to existing shareholders required by state fiduciary duty laws."); 144 Cong. Rec. E1385, Statement of Rep. Fazio (1998) ("Only those suits traditionally filed in Federal courts would be affected by H.R. 1689, while those claims that historically have been pursued in State courts would be left undisturbed.")

Congress's subsequent adoption of the Class Action Fairness Act ("CAFA") further reinforces a lack of intent to pre-empt traditional state remedies in the area of non-covered securities. 28 U.S.C. § 1332(d). CAFA established a new, broad removal regime for cases outside the securities arena, even cases founded on state law, creating federal jurisdiction for class action cases in those areas. SLUSA represents Congress's intent in 1998 to preempt the narrow swath of securities fraud cases it perceived as properly situated in federal court based on actions involving nationally-traded securities; it was seven years later, in CAFA, that Congress addressed class actions involving other allegations, such as those involving business torts, consumer finance fraud, and breach of fiduciary duty. SLUSA, in other words, had a very narrow and limited scope. Congress was aware of it when it

was enacted, which explains why it returned with a broader removal statute in 2005.

II. The Attenuated Connection Betweer Common Business Torts and Nationally-Traded Securities Suggests that Petitioner's Interpretations of SLUSA Would Bar Claims Completely Unrelated to Federal Securities Laws

The interpretation of SLUSA that Petitioners advance is predicated on the idea that the alleged fraud committed against Respondents was "in connection with the purchase or sale of a covered security" because Respondents alleged that: (1) their purchases of SIB-issued CDs were induced in part by the misrepresentation that the CDs were backed by SLUSA-covered securities ("highly marketable securities issued by stable governments, strong multinational companies and major international banks"); and (2) their CD purchases were induced in part by the representation that SIB's overall portfolio was backed by SLUSA-covered securities, which made the CDs a stable and profitable investment. *Roland*, 675 F.3d at 509-510. The District Court determined that the CDs that Respondents purchased were not covered securities themselves, which neither party disputes. *Id.* Such a conclusion did not end the inquiry, according to the District Court, however, because, if the fraud committed "coincided and depended upon" the purchase or sale of covered securities, the fraud was properly "in connection with" the purchase or sale of such securities as a matter of law. *Id.* at 510, 513.

Amici do not have a preference for which test this Court should adopt in determining the proper scope of SLUSA as it regards *Zandford's* "coincides with" test for the

"in connection with" language of § 10(b) and SLUSA. But they urge this Court to reject any approach concluding that SLUSA applies to non-covered bank-issued securities that may be potentially backed by covered securities. Such an approach would swallow an enormous number of state-law fiduciary-duty claims and common business torts, in addition to the state creditor-debtor regimes implicated by the court below.[5] Moreover, as noted above, such an approach would bestow on defendants the ability to avoid liability under either state or federal law for securities fraud involving non-nationally traded securities by merely invoking reliance on covered securities in their marketing materials or establishing some relationship to covered securities in their banking relationship, which, given that "every bank and almost every company owns some covered securities in its portfolio," would allow securities defendants to engage in fraud not subject to liability in any court. *See Roland*, 675 F.3d at 518.

Amici suggest that SLUSA should be interpreted in a manner consistent with its express language and Congressional intent, such that the statute applies only to suits

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[5] *See Roland*, 675 F.3d at 518 ("In addition to fiduciary duty actions, over-extension of SLUSA also threatens state creditor-debtor regimes, which we have held are likely available to the Appellants. *See Janvey v. Adams*, 588 F.3d 831, 835 (5th Cir. 2009). . . . This wariness is echoed by the members of Congress appearing as *amici* on behalf of the Appellants: 'The interpretation of SLUSA and the 'in connection with' requirement adopted by the District Court . . could potentially subsume any consumer claims involving the exchange of money or alleging fraud against a bank, without regard to the product that was being peddled.' As they point out, every bank and almost every company owns some covered securities in its portfolio, and every debt instrument issued by these banks and companies is backed by this portfolio in the same way the CDs here were ultimately backed by the assets in SIB's portfolio. Precluding any group claim against any such debt issue merely because the issuer advertises that it owns these assets in its portfolio would be a major change in the scope of SLUSA.").

alleging conduct that violates § 10(b) or other provisions of the federal securities laws applicable to nationally-traded securities. Allegations that would not constitute a violation of federal securities laws should not be deemed preempted by SLUSA.

Understanding SLUSA as a complement to the previously enacted federal securities laws, rather than as a freestanding bar to claims previously unaffected by federal securities law, is the most coherent way to read Congress's gradual refinement of the legislation governing securities litigation. Either the complaint in a class action alleges conduct that violates § 10(b) (or another provision of federal securities law) or it does not. If the complaint adequately alleges conduct involving the purchase or sale of nationally-traded securities that violates federal securities law, suit should be brought in federal court under federal law. If such a complaint is instead brought under state law, and it is a "covered class action" under SLUSA, it must be removed to federal court where it will be dismissed pursuant to SLUSA. If, however, the complaint does not allege conduct involving the purchase or sale of securities that violates federal securities laws, it cannot be brought under federal law in the first place, and must instead be brought under state fiduciary-duty law or other state law. Petitioners' interpretation to the contrary would compel wholly state-law claims to be removed to federal court, and subsequently dismissed under federal law, regardless of the fact that such a practice does nothing to further the purposes of SLUSA and constitutes a significant intrusion into an area of law that is traditionally a matter for the states.

Several areas of law suggest the highly attenuated connections between fraudulent business practices and

nationally traded securities that would wipe out whole swaths of state law claims under the Petitioners' interpretation of SLUSA. First, consider the area of consumer fraud. What if a mortgage broker lies to homeowners to get them to take out mortgages, and the mortgages are securitized in a pool and interests in the pool are sold off as covered securities? The homeowners then bring a class action against the mortgage brokers for fraud. Under the District Court's interpretation of SLUSA, these claims would be preempted because the mortgages are collateral for a covered security, even though the fraud itself had nothing to do with covered securities or the types of conduct that the 1933 Act, the 1934 Act, the PSLRA, or SLUSA were designed to regulate.

Even further, imagine a similar situation involving securitized car loans or credit card receivables. A car dealer lies to customers about the terms of a car loan, and the car loans are securitized in a pool and interests in the pool are sold off as covered securities. A class action for fraudulent lending practices is filed by consumer debtors and card holders, but no claim is made by the security purchasers. These types of claims are clearly not the type that Congress intended to preempt when enacting SLUSA.

Other examples include:

- A credit card company that securitizes credit card balances fails to pay appropriate wages to telephone operators answering card holder questions, and the operators file a state class action alleging violations of state wage and hour laws.

- A nationally-traded securities clearing firm engages in sex discrimination in compensating clerical workers for work done in the securities office, and the workers file a sex discrimination class action law suit.

The notion that a misrepresentation that invokes the specter of a covered security is sufficient to bring a claim within the ambit of SLUSA is similarly problematic in the consumer fraud context. Such an interpretation would likely have the effect of preempting these unrelated claims as well:

- A broker-dealer fails to pay appropriate wages to telephone operators who talk with investors, often discussing with them trading in covered securities, and the operators file a state class action alleging violations of wage and hour laws.

- A company with fraudulent financial statements sells stock that is a nationally traded covered security, but also sells senior notes in a private placement to institutional investors. The notes are not a covered security. The stock holders sue in federal court but the note holders sue in state court in the state whose law applies pursuant to the private placement memorandum.

- A privately held company that is not backed by publicly traded securities wants to engage in a friendly merger with a company that is backed by nationally-traded securities. In public statements, both companies lie to shareholders about the merger. Under Petitioners' construction of SLUSA, the nationally-traded company shareholders can sue for these lies, and can file a class action in federal court. But if the privately-held company's shareholders want to sue for breach of fiduciary duty because of the same lies, these claims, to the extent

they are not derivative claims, would be preempted under SLUSA.

The above possible claims are only the tip of the iceberg. Under Petitioners' interpretation of SLUSA and the argument that investment by a defendant in covered securities is sufficient to convert a claim in connection with the sale by a defendant of a non-covered security into a claim "in connection with the purchase or sale of a covered security" under SLUSA, all of the above discussed claims would be preempted.[6]

The District Court also found SLUSA applicable based on the fact that at least one Plaintiff acquired SIB CDs with the proceeds received from selling covered securities in their IRA portfolio. *Roland*, 675 F.3d at 522. But, as the Court below correctly determined, the District Court's approach regarding this alleged connection was incorrect. The appropriate inquiry under SLUSA is whether the alleged fraudulent scheme was connected with a transaction in a covered security. *Id.* In *Bankers Life* and *Zandford*, the fraud

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[6] Judge Posner of the Seventh Circuit Court of Appeals has expanded on the breadth of the types of claims that would be foreclosed under Petitioners' broad interpretation of SLUSA. *See Gavin*, 464 F.3d at 639 ("Of course there is a literal sense in which anything that happens that would not have happened but for some prior event is connected to that event. In that sense the fraud of which the plaintiff complains is connected to the merger, without which there would not have been such a fraud against the plaintiff and her class. But in the same sense the fraud is connected to the Big Bang, without which there would never have been a MediaOne or even an AT & T. . . . [T]he general point that the cases just cited illustrate [is this]: a mere 'but for' cause linking a securities transaction (here, the merger of MediaOne into AT & T) to a subsequent injury (concealment of the option to receive the Standard Election without paying any fee) does not make the injury one suffered 'in connection with the purchase or sale of securities.' Otherwise SLUSA would apply to a class action by shareholders who suffered paper cuts when they opened the letters informing them of their rights under the merger.").

could not have been accomplished but for the defendants' convincing the plaintiffs to sell their covered securities. Here, while it was necessary for the fraud to have the Plaintiffs purchase CDs, the fact that some Plaintiffs sold some covered securities in order to buy the CDs was not more than tangentially related, if at all, to the fraudulent scheme. *See Roland*, 675 F.3d at 522. The focus of the fraud was on the fraudulent sale of CDs, not the sale of whatever assets were used to buy the CDs. *Amici* are aware of no court of appeals decision that has found SLUSA preemption under those circumstances.[7]

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[7] Here, the sources of cash used to fund purchases of SIB's CDs were entirely incidental to the fraud. *Cf. Bankers Life*, 404 U.S. at 10. In *Bankers Life*, the Treasury securities were the focal point of the fraud because they represented a highly liquid asset of the victim insurance company that was used to purchase stock in a related corporation, thus diverting the proceeds of the sale of the Treasury bonds from their proper use in order to purchase a certificate of deposit—i.e., the misappropriation of the Treasury securities was an integral part of the fraud. The application of federal or state law to transactions by which thousands of investors were victimized in a common fraudulent scheme ought not to depend upon such an irrelevant factor as the sources of some of those victims' funds where those sources are not integral to the fraud.

III. This Court's Teachings Emphasize the Importance of Interpreting SLUSA's "In Connection With" Language as Applying Only to Covered Securities

The federal securities laws traditionally make two distinctions in differentiating between those types of securities covered by federal law and those that are not. First, as noted above, private offerings of securities, and transactions involving non-securities financial instruments, are not covered by federal securities laws. Second, securities not traded on United States exchanges are not covered by federal securities laws. *Morrison*, 130 S.Ct. at 2887-88. *Morrison*, indeed, notes this Court's jurisprudence emphasizing that the scope of SLUSA is about the *security*, rather than about either the *issuer* or the alleged fraud. *Morrison* drew a bright line between types of securities and held that only domestic securities are subject to the federal securities laws. Any interpretation of the instant case that does not make a similar distinction between nationally-traded securities and non-nationally traded securities would be inconsistent with both *Morrison* and Congress's intent in enacting SLUSA.

In *Morrison*, this Court ruled that securities fraud suits could not be brought under § 10(b) against foreign defendants by foreign plaintiffs who bought their securities outside the United States (the so called "f-cubed" securities litigation). 130 S. Ct. 2869. The plaintiffs in *Morrison*, who purchased shares of National Australia Bank ("NAB") on the Australian stock exchange, claimed they had been deceived in Australia by statements of NAB about the finances of a U.S. subsidiary and they sued NAB under § 10(b). *Id.* at 2876. This Court held that the alleged fraudulent conduct in the U.S. subsidiary

was insufficient to apply § 10(b) extraterritorially to transactions in NAB stock on the Australian stock exchange. *Id.* at 2887-88.

This Court held that § 10(b) did not apply because "the focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States." *Id.* at 2884. This Court then concluded that § 10(b) reaches only fraud in connection with the "purchase or sale of a security listed on an American stock exchange, and the purchase or sale of any other security in the United States." *Id.* at 2888.

The only reasonable interpretation in this case that would not contradict *Morrison* is that SLUSA is intended to deal with plaintiffs who bought and sold a covered security that was the subject of relevant fraud. *Morrison* drew a bright line for securities implicated by § 10(b) and SLUSA based on the security at issue, not the misrepresentation or the underlying fraud. "[T]he focus of the Exchange Act is not upon the place where the *deception* originated, but *upon purchases and sales of securities* in the United States." *Id.* at 2884 (emphasis added). In the instant case, no covered security was bought or sold in any part of the transaction.

In applying *Morrison* to the case at bar, the nature of the investment is critical. Respondents bought CDs from SIB. This type of instrument has a fixed rate of return, and is not a speculative investment. Respondents were never promised an extraordinary rate of return. Rather, upon maturity, if for some reason the Bank was unable to pay out the principal and interest promised, the investment would be protected by insurance. In buying these CDs, no one intended that any party to the transaction would obtain any interest in any covered security. The investment was not based on a

pass-through or "ghost" entity. *Roland*, 675 F.3d at 522. "[P]laintiffs could [not] claim that they deposited their money in the bank for the purpose of purchasing covered securities." *Id.* (quoting *Pension Committee of the Univ. of Montreal Pension Plan v. Banc of Am. Secs., LLC*, 750 F. Supp. 2d 450, 455 n.27 (S.D.N.Y. 2010) (second alteration in original)). At the risk of repetition, no part of the purchase or sale here involved a covered security.

Morrison also explicitly rejected any test that would allow transactions that met a "conduct and effects test," *i.e.* in situations involving fraud in extraterritorial securities transactions that "[involve] significant conduct in the United States that is material to the fraud's success." *Morrison*, 130 S. Ct. at 2886-88. This is because the Court found no intention on the part of Congress to affect transactions not taking place within the United States. *Id.* at 2891. A similar bright line approach is appropriate here. There is no indication that Congress intended to include securities not traded on a national exchange under SLUSA, since such securities were not covered under the PSLRA or either the 1933 or 1934 Act. A holding consistent with *Morrison* would reject any interpretation of SLUSA that would allow a transaction not involving a covered security—that is, one not traded on an American national exchange—to be preempted merely because some tangential aspect of the transaction misrepresented that a covered security would possibly be involved.

Just as this Court limited the territorial application of U.S. securities laws in *Morrison*, it should similarly interpret the language following the "in connection with" phrase of SLUSA. That is, SLUSA applies only to transactions involving "covered securities." *Morrison* considered and

rejected an attempt to interpret the plain language of § 10(b) to include claims relating to securities that were purchased outside the United States. Petitioners' effort here to extend the plain language following SLUSA's "in connection with" language to non-covered securities should also be rejected.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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